

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 VISITACION DEVELOPMENT, LLC, A SUBSIDIARY OF THE UNIVERSAL  
PARAGON CORPORATION  
RELATIVE TO THE DEVELOPMENT KNOWN AS  
THE SCHLAGE LOCK DEVELOPMENT PROJECT**

TABLE OF CONTENTS

Page

1. **GENERAL PROVISIONS**.....6

1.1. Incorporation of Preamble, Recitals and Exhibits .....6

1.2. Definitions.....6

1.3. Effective Date .....16

1.4. Term.....16

2. **VESTING AND CITY OBLIGATIONS** .....17

2.1. Vested Rights .....17

2.2. Existing Standards .....17

2.3. Future Changes to Existing Standards .....17

2.4. Fees and Exactions.....19

2.5. Limitation on City’s Future Discretion.....20

2.6. Changes in Federal or State Laws.....21

2.7. No Action to Impede Basic Approvals .....22

2.8. Criteria for Approving Implementing Approvals .....22

2.9. Construction of Public Improvements .....23

2.10. Taxes .....23

3. **DEVELOPMENT OF PROJECT SITE**.....23

3.1. Development Rights.....23

3.2. Compliance with CEQA .....23

3.3. Vested Rights; Permitted Uses and Density; Building Envelope .....24

3.4. Commencement of Construction; Development Phases; Development Timing .....25

3.5. Community Improvements, Stormwater Management Improvements and/or  
Public Improvements .....29

3.6. Non-City Regulatory Approvals for Public Improvements .....32

3.7. Financing of Any Public Improvements .....35

3.8. Cooperation.....36

3.9. Subdivision Maps.....40

3.10. Interim Uses .....41

3.11. Public Power .....41

4. **PUBLIC BENEFITS MEETING AND EXCEEDING THOSE REQUIRED BY  
EXISTING ORDINANCES, REGULATIONS, AND POLICIES RELATED TO  
HOUSING AND OTHER PUBLIC BENEFITS**.....41

4.1. Costa-Hawkins Rental Housing Act .....41

4.2. Inclusionary Affordable Housing Program.....42

4.3. Transportation Fee Obligation .....42

4.4. Workforce .....43

4.5. Transportation-Related Improvements .....43

4.6. Historic Office Building Rehabilitation.....44

4.7. Impact Fee.....44

4.8. Transportation Demand Management Plan .....45

4.9. Grocery and Retail .....45

5.	<b>DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS</b> .....	45
5.1.	Interest of Developer; Due Organization and Standing .....	45
5.2.	Priority of Development Agreement.....	45
5.3.	No Conflict With Other Agreements; No Further Approvals; No Suits.....	45
5.4.	No Inability to Perform; Valid Execution.....	46
5.5.	Conflict of Interest .....	46
5.6.	Notification of Limitations on Contributions .....	46
5.7.	Other Documents .....	46
5.8.	No Suspension or Debarment .....	47
5.9.	No Bankruptcy .....	47
5.10.	Taxes .....	47
5.11.	Notification .....	47
6.	<b>OBLIGATIONS OF DEVELOPER</b> .....	47
6.1.	Completion of Project.....	47
6.2.	Compliance with Conditions and CEQA Mitigation Measures.....	47
6.3.	Progress Reports .....	48
6.4.	Community Participation in Allocation of Impact Fees .....	48
6.5.	Sustainability Evaluation .....	48
6.6.	Cooperation By Developer .....	49
6.7.	Nondiscrimination.....	49
6.8.	First Source Hiring Program.....	49
6.9.	Prevailing Wages .....	51
6.10.	Payment of Fees and Costs .....	51
6.11.	Nexus/Reasonable Relationship Waiver.....	52
6.12.	Taxes .....	52
6.13.	Indemnification of City.....	52
6.14.	Contracting for Public Improvements.....	53
6.15.	Notice of Special Restrictions for Parks .....	53
6.16.	Fire Suppression Obligations.....	53
7.	<b>OBLIGATIONS OF CITY</b> .....	54
7.1.	No Action to Impede Basic Approvals .....	54
7.2.	Processing During Third Party Litigation.....	54
7.3.	Criteria for Approving Implementing Approvals .....	54
7.4.	Coordination of Offsite Improvements.....	55
7.5.	Commitment of Transportation Funds.....	55
7.6.	Park Acquisition.....	57
7.7.	On-Street Parking Management.....	57
8.	<b>MUTUAL OBLIGATIONS</b> .....	57
8.1.	Notice of Completion or Revocation .....	57
8.2.	Estoppel Certificate.....	58
8.3.	Cooperation in the Event of Third-Party Challenge .....	58
8.4.	Good Faith and Fair Dealing.....	58
8.5.	Other Necessary Acts.....	59
9.	<b>PERIODIC REVIEW OF DEVELOPER’S COMPLIANCE</b> .....	59
9.1.	Annual Review.....	59
9.2.	Review Procedure .....	59

10.	<b>AMENDMENT; TERMINATION; EXTENSION OF TERM</b> .....	60
	10.1. Amendment or Termination.....	60
	10.2. Termination and Vesting.....	60
	10.3. Extension Due to Legal Action, Referendum, or Excusable Delay.....	60
11.	<b>TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE</b> .....	61
	11.1. Permitted Transfer of this Agreement.....	61
	11.2. Transferee Obligations.....	63
	11.3. Notice and Approval of Transfers.....	63
	11.4. City Review of Proposed Transfers .....	64
	11.5. Permitted Change; Permitted Contracts.....	65
	11.6. Release of Liability .....	65
	11.7. Rights of Developer .....	65
	11.8. Developer’s Responsibility for Performance.....	66
	11.9. Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default .....	66
	11.10. Constructive Notice .....	67
12.	<b>ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION</b> .....	68
	12.1. Enforcement.....	68
	12.2. Default.....	68
	12.3. Notice of Default.....	68
	12.4. Remedies.....	69
	12.5. Dispute Resolution.....	70
	12.6. Dispute Resolution Related to Changes in State and Federal Rules and Regulations .....	70
	12.7. Attorneys’ Fees .....	71
	12.8. No Waiver.....	71
	12.9. Future Changes to Existing Standards .....	71
	12.10. Joint and Several Liability .....	71
13.	<b>MISCELLANEOUS PROVISIONS</b> .....	72
	13.1. Entire Agreement .....	72
	13.2. Binding Covenants; Run With the Land .....	72
	13.3. Applicable Law and Venue.....	72
	13.4. Construction of Agreement.....	72
	13.5. Project Is a Private Undertaking; No Joint Venture or Partnership .....	72
	13.6. Recordation .....	73
	13.7. Obligations Not Dischargeable in Bankruptcy .....	73
	13.8. Signature in Counterparts .....	73
	13.9. Time of the Essence .....	73
	13.10. Notices .....	73
	13.11. Limitations on Actions.....	74
	13.12. Severability .....	74
	13.13. MacBride Principles.....	74
	13.14. Tropical Hardwood and Virgin Redwood.....	74
	13.15. Sunshine.....	74
	13.16. No Third Party Beneficiaries .....	75

## **Exhibits**

- A Project Site Diagram
- B Legal Description
- C List of Community Improvements
- D Regulations Regarding Access and Maintenance of Full Public Access Privately-Owned Community Improvements
- E Impact Fees and Exactions
- F Phasing Plan
- G Phase Application Checklist
- H Area of Private Maintenance and Operations Obligation Map
- I Mitigation Measures and MMRP
- J Transportation Demand Management Plan
- K Affordable Housing Plan
- L Infrastructure Plan
- M Park Acquisition Process
- N Subdivision Requirements
- O San Francisco Administrative Code sections 56.17 and 56.18
- P Form of Assignment and Assumption Agreement
- Q Notice of Special Restrictions for Community Use Restrictions for Old Office Building
- R Notice of Special Restrictions for Visitacion Park
- S Notice of Special Restrictions for Leland Greenway Park
- T Subordination Agreement

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO  
AND VISITACION DEVELOPMENT, LLC, A CALIFORNIA LIMITED LIABILITY  
COMPANY, A SUBSIDIARY OF UNIVERSAL PARAGON CORPORATION,  
RELATIVE TO THE DEVELOPMENT KNOWN AS  
THE SCHLAGE LOCK DEVELOPMENT PROJECT**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) dated for reference purposes only as of this \_\_\_\_ day of \_\_\_\_\_, 2014, 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 VISITACION DEVELOPMENT, LLC, a California limited liability company, a subsidiary of Universal Paragon Corporation, a Delaware corporation, its permitted successors and assigns (the “**Developer**”), pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the San Francisco Administrative Code.

**RECITALS**

This Agreement is made with reference to the following facts:

A. The Schlage Lock Company operated an industrial facility in the City’s Visitacion Valley neighborhood for over 70 years. After the closure of the facility in 1999, the City initiated efforts to develop long-term planning goals for the property formerly occupied by the Schlage Lock Company, as well as adjacent parcels owned by Universal Paragon Corporation (“**UPC**”), hereafter collectively referred to as “**the Project Site.**” The Project Site is located in the southeast quadrant of San Francisco, commonly referred to as Visitacion Valley, a neighborhood bounded approximately to the north and west by McLaren Park and the Excelsior and Crocker Amazon districts, to the east by the Caltrain tracks and to the south by the San Francisco/San Mateo County line and the City of Brisbane. The Project Site is more particularly described in Exhibit A.

B. The Visitacion Valley neighborhood struggled economically subsequent to the closure of the Schlage Lock facility. In recent years, limited investment in the maintenance of certain industrial, commercial, and residential properties within and around the Project Site has resulted in the prolonged use of obsolete and inadequate structures, nearly vacant and abandoned commercial and industrial buildings, obsolete public facilities and some privately-owned, deteriorating dwellings.

C. After the closure of the Schlage Lock facility, a Home Depot was proposed for the Project Site but met with significant opposition from community members who expressed concern that “big box” formula retail uses would be incompatible with the surrounding neighborhood. In response, the City and County of San Francisco Board of Supervisors (“**Board**”) imposed interim zoning controls on the Project Site, which changed its industrial (“**M-1**”) zoning to neighborhood commercial (“**NC-3**”), and also imposed a maximum use size limit of 50,000 square feet. At that time, the Board indicated the need to establish permanent planning controls that would supplant the interim regulations.

D. Beginning in 2001, the City initiated community engagement efforts in order to spearhead the long-term planning process for the Project Site as well as the Visitacion Valley neighborhood more broadly. During community workshops, neighborhood residents expressed ten primary objectives for future development of the Project Site:

- Ensure a mix of uses, including different types of housing, retail, community facilities, city services and open space;
- Attract a full-service grocery store and provide a variety of retail options;
- Include affordable housing to increase the local supply of well-designed affordable housing for low income and working individuals, families and seniors;
- Create opportunities for local employment;
- Create a family-oriented, mixed-use destination that should include pedestrian walkways and destination points, such as small plazas;
- Incorporate thoughtful design that considers existing architectural styles and character and incorporates local historical and cultural elements;
- Improve the safety, pedestrian orientation and look of Bayshore Boulevard through new stores, traffic calming, and a new community-policing substation;
- Ensure a relationship between new stores on the Schlage Lock site and the existing retail corridor on Leland Avenue, to revitalize the central shopping area;
- Bridge Little Hollywood and Visitacion Valley through the creation of new streets and foot and bike paths throughout the site; and
- Convert the old Schlage Lock office building to a civic use and consider new buildings for public, city and community services.

E. The City's community engagement efforts culminated in the Visitacion Valley/Schlage Lock Community Planning Workshop Strategic Concept Plan and Workshop Summary, which included a strategic concept plan to serve as the basis for future planning efforts. The Schlage Lock Strategic Concept Plan ("**Concept Plan**"), was endorsed by the Board pursuant to Resolution No. 425-05, approved on June 7, 2005. In addition to its adoption of the Concept Plan, the Board designated Visitacion Valley as a Redevelopment Survey Area pursuant to Resolution No. 424-05, approved on June 7, 2005.

F. Between 2006 and 2007, the City conducted preliminary community workshops on the Project Site. The workshops focused on developing alternative framework plans, selecting a preferred urban design framework plan addressing building, streetscape and open space designs, site sustainability features, and design guidelines for new development. During that same time period, the San Francisco Redevelopment Agency ("**Redevelopment Agency**") established the Visitacion Valley Citizens Advisory Committee ("**CAC**"), and worked with the Planning Department to craft long-term plans for the redevelopment of the Project Site. These

efforts resulted in two documents: the Visitacion Valley Redevelopment Plan (“**Redevelopment Plan**”) and the Visitacion Valley/Schlage Lock Design for Development (“**Design for Development**”), both of which incorporate the Concept Plan.

G. The Redevelopment Plan contemplated a mixed-use development comprised of approximately one thousand six hundred (1,600) units of new housing, including at least four hundred (400) affordable rental and for-sale units. One thousand two hundred fifty (1,250) of the proposed housing units would be located on the Project Site. As proposed, the Project Site would have been transformed into a mixed-use, transit-oriented community with new public streets, new parks, and a community center created within the existing Schlage Lock office building. In addition, retail corridors along Leland Avenue would be enhanced by coordinated economic development activities and new retail uses, including a grocery store. The Redevelopment Plan was predicated on a public investment of at least \$48 million, to be raised through the Redevelopment Agency’s tax increment financing capability.

H. On December 16, 2008, by Resolution No. 157-2008, the Redevelopment Agency certified a Final Environmental Impact Report (“**FEIR**”) for the Redevelopment Plan, which included the proposed changes to the Project Site. On December 18, 2008, by Motion No. 17786 the San Francisco Planning Commission also certified the FEIR. Each body found the document to be accurate and objective and in compliance with the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 et seq. (“**CEQA**”), the CEQA Guidelines, Title 14 Cal. Code Regs. Section 15000 et seq., and Chapter 31 of the San Francisco Administrative Code. Each body also adopted CEQA approval findings, by Planning Commission Motion No. 17790 and Redevelopment Agency Commission Resolution No. 1-2009, which included a Statement of Overriding Consideration, and adopted a Mitigation Monitoring and Reporting Program (“**MMRP**”).

I. On April 28, 2009, the Board approved the Redevelopment Plan pursuant to Resolution No. 70-09. In addition, the Board approved amendments to the General Plan, Planning Code, and Zoning Map, pursuant to Resolution Nos. 72-09, 73-09, and 71-09, respectively, in order to implement the Redevelopment Plan and the Design for Development. In each of the aforementioned resolutions, the Board adopted the CEQA approval findings of the Planning Commission and/or the Redevelopment Agency Commission and the MMRP.

J. In 2009, the California Department of Toxic Substances (“**DTSC**”) approved a remedial action plan (“**RAP**”) to govern the removal of groundwater and soil contamination at the Project Site caused by the prior industrial use. UPC agreed to pay for the cost of remediation, although it did not acquire ownership of the Project Site until long after the former contamination-causing use had ceased.

K. The Redevelopment Agency was dissolved by legislation adopted in 2011 and effective on February 1, 2012, by order of the California Supreme Court in a decision issued on December 29, 2011. At this time, the Redevelopment Agency and UPC were in the process of negotiating the Project’s financial terms, which were to be memorialized in an Owner Participation Agreement (“**OPA**”) between the two parties. Because the legislation and court decision dissolving Redevelopment occurred prior to the completion of OPA negotiations and



approvals , the City lost the ability to access the public funds necessary to implement the Redevelopment Plan.

L. After the dissolution of the Redevelopment Agency, the Planning Department, the Office of Economic and Workforce Development and UPC reinitiated community participation efforts in order to devise a strategy that would allow the project to proceed despite the loss of funding through the former powers of the Redevelopment Agency; such efforts include convening a Visitacion Valley/Schlage Lock Advisory Body and holding numerous community workshops.

M. 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 Government Code Section 65865, the City adopted Chapter 56 (“**Chapter 56**”) of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

N. The project now proposed by the Developer (“**Project**”), as defined in the Basic Approvals, calls for up to 1,679 dwelling units of new housing, up to 46,700 square feet of new retail, and the rehabilitation of a historic office building located on-site. Through the Agreement, the Project Site will be transformed into a mixed-use, transit-oriented development with new public streets and new parks. The Project is designed to advance the same objectives that have been expressed by community members for the last decade. 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. Some of the major additional public benefits accruing to the City from the Project are:

- Retention and rehabilitation of the existing historic Schlage Lock office building;
- Significant opportunities for local employment, both during the Project’s construction phase and afterward due to the new retail uses;
- The creation of a minimum of two new public parks;
- The use of thoughtful design that accounts for existing architectural styles, local historical and cultural elements while simultaneously enhancing environmental sustainability through the use of the Design for Development established by the Visitacion Valley Design Review and Document Approval Procedure (“**DRDAP**”);
- Creation of a mixed-use destination that includes pedestrian walkways and destination points;

- Improved traffic circulation through the implementation of a transportation demand management plan, on-site maximums for parking spaces, and programs to encourage residential occupants to maximize public transit, pedestrian, and bicycle travel; and
- Whereas the Redevelopment Plan would have required a substantial public investment, the Project, by comparison, will rely on a greater proportion of private investment.

O. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with CEQA, the CEQA Guidelines, Chapter 31 of the San Francisco Administrative Code, the Development Agreement Statute, Chapter 56 of the Planning Code, the Enacting Ordinance 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.

P. On May 27, 2014, the Planning Department issued an Addendum to the FEIR certified by the Redevelopment Agency Commission on December 16, 2008 and the Planning Commission on December 18, 2008. This Addendum, together with an Addendum issued by the California Department of Toxic Substances Control, analyze the proposed changes to the Schlage Lock Development Project contemplated in this Agreement. The information in the FEIR and the Addendums has been considered by the City in connection with the approval of this Agreement. The FEIR and the Addendums, as well as all other records related to the environmental review of the Schlage Lock Development Project, are available for public review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

Q. On June 5, 2014, the Planning Commission held a public hearing on this Agreement, duly noticed and conducted under the Development Agreement Statute and Chapter 56 and reviewed the Project, the Addendum and the public testimony regarding these matters. Following the public hearing, the Planning Commission adopted required findings under CEQA (“**CEQA Findings**”) and a revised MMRP and determined that the Project and this Agreement are, as a whole and taken in their entirety, consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the “**General Plan Consistency Findings**”).

R. On \_\_\_\_\_, the Board, having received the Planning Commission’s recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board adopted CEQA Findings and the revised MMRP and approved this Agreement, incorporating by reference the General Plan Consistency Findings.

S. On \_\_\_\_\_, the Board adopted Ordinance No. \_\_\_\_\_, approving this Agreement [Ordinance No. \_\_\_\_\_, modifying Chapter 56], Ordinance Nos. \_\_\_\_\_ [placeholder

for zoning ordinance, general plan, street vacations, etc.], and Ordinance No. \_\_\_\_\_ authorizing the Planning Director to execute this Agreement on behalf of the City (“**the Enacting Ordinance**”). The Enacting Ordinance took effect on \_\_\_\_, 2014.

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. “**Affiliated Project**” shall have the meaning set forth in Exhibit K.

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

1.2.4. “**Affordable Housing Fee**” shall have the meaning set forth in Planning Code Section 415.5.

1.2.5. “**Agreement**” shall have the meaning set forth in the preamble paragraph.

1.2.6. “**Alternate Community Improvement**” shall have the meaning set forth in Section 3.6.4.

1.2.7. “**Assignment and Assumption Agreement**” shall have the meaning set forth in Section 11.3.1.

1.2.8. “**Basic Approvals**” shall mean the following land use approvals, entitlements, and permits relating to the Project that were approved by the Board concurrently with this Agreement: the General Plan amendment (Board of Supervisors Ord. No. \_\_\_\_\_), the Special Use District, which shall include both the Planning Code text amendment (Board of Supervisors Ord. No. \_\_\_\_\_) and the Zoning Map amendments (Board of Supervisors Ord. No. \_\_\_\_\_).

\_\_\_\_\_), and the Schlage Lock Development Plan Documents, all of which are incorporated by reference into this Agreement.

1.2.9. “**BMR Requirement**” shall have the meaning as described with regard to the Inclusionary Housing Program defined in Exhibit K to this Agreement.

1.2.10. “**BMR Units**” shall mean inclusionary affordable housing units required by the City’s Inclusionary Affordable Housing Program, as set forth in Planning Code section 415 et seq.

1.2.11. “**Board of Supervisors**” or “**Board**” shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.12. “**Building Code**” shall mean the San Francisco Building Code.

1.2.13. “**CC&Rs**” shall have the meaning set forth in Section 3.5.3.

1.2.14. “**CEQA**” shall have the meaning set forth in Recital I.

1.2.15. “**CEQA Findings**” shall have the meaning set forth in Recital R.

1.2.16. “**CFD**” shall have the meaning set forth in Section 3.8.

1.2.17. “**Chapter 56**” shall have the meaning set forth in Recital N.

1.2.18. “**Chapter 83**” shall have the meaning set forth in Section 6.8.

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

1.2.20. “**City Agency**” or “**City Agencies**” shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over any Development Phase on the Project Site, or any Community Improvement or Public Improvement located on or off the Project Site, including, but not limited to, the City Administrator, Planning Department, DBI, MOH, OEWD, SFMTA, SFPUC, DPW, DRP, and SFFD, together with any successor City agency, department, board, or commission.

1.2.21. “**City Attorney’s Office**” shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.22. “**City Costs**” shall mean the actual and reasonable costs incurred by a City Agency in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in Section 8.3.2, but excluding work and fees covered by Processing Fees.

1.2.23. “**Community Improvements**” shall mean any capital improvement or facility, on-going service provision or monetary payment, or any service required by the Basic Approvals and this Agreement for the public benefit that is not: (1) a Mitigation Measure for the Project required by CEQA; (2) a public or private improvement or monetary payment required by Existing Standards or Uniform Codes (including, for example, utility connections required by Uniform Codes, the payment of Impact Fees and Exactions, and Planning Code-required open space); (3) stormwater management improvements; or (4) the privately-owned residential and commercial buildings constructed on the Project Site, with the exception of the Historic Office Building, which is a Community Improvement and may be privately-owned. Furthermore, Community Improvements shall not include any units constructed by Developer or fee paid by Developer in compliance with the BMR Requirement, which also provide the City with a negotiated benefit of substantial economic value.

With the exception of Alternate Community Improvements, all Community Improvements required by the Basic Approvals and this Agreement are shown on the Phasing Plan. Section 3.5.3 of this Agreement sets forth the ownership and maintenance responsibilities of the City and Developer for the Community Improvements. Community Improvements include the following types of infrastructure or facilities:

(1) **Public Improvements.** These facilities are listed on Exhibit C attached hereto. Because these improvements shall be dedicated to and accepted by the City, they also fall within the definition of Public Improvements. They may be publicly-maintained or privately-maintained based on the specific terms of Section 3.5.3 of this Agreement.

(2) **Privately-Owned Community Improvements.** These are facilities or services, defined in Section 1.2.88 and listed on Exhibit C.

All Community Improvements are required as a condition of regulatory approval of this Project.

1.2.24. “**Complete**” and any variation thereof shall mean, as applicable, that (i) a specified scope of work has been substantially completed in accordance with approved plans and specifications, (ii) the City Agencies or Non-City Responsible Agencies with jurisdiction over any required permits have issued all final approvals required for the contemplated use, and (iii) with regard to any Public Improvement, (A) the site has been cleaned and all equipment, tools and other construction materials and debris have been removed, (B) releases have been obtained from all contractors, subcontractors, mechanics and material suppliers or adequate bonds reasonably acceptable to the City posted against the same, (C) copies of all as-built plans and warranties, guaranties, operating manuals, operations and maintenance data, certificates of completed operations or other insurance within Developer’s possession or control, and all other

close-out items required under any applicable authorization or approval, as may be needed, have been provided, and (D) the City Agencies, including DPW and SFPUC, as appropriate, or Non-City Responsible Agencies have certified the work as complete, operational according to the approved specifications and requirements, and ready for its intended use, and, if applicable, DPW has agreed to initiate acceptance.

1.2.25. “**Construction Contract**” shall have the meaning set forth in Section 6.14.

1.2.26. “**Contractor**” shall have the meaning set forth in Section 6.14.

1.2.27. “**Continuing Obligation**” shall have the meaning set forth in Section 3.6.3.

1.2.28. “**Cost Estimator**” shall have the meaning set forth in Section 3.6.8.

1.2.29. “**Costa-Hawkins Act**” shall have the meaning set forth in Section 4.1.

1.2.30. “**CPUC**” shall have the meaning set forth in Section 3.6.1.

1.2.31. “**DBI**” shall mean the San Francisco Department of Building Inspection.

1.2.32. “**Design Review Application**” shall have the meaning set forth in Section 3.3.1.

1.2.33. “**Design Review Approval**” shall have the meaning set forth in Section 3.3.1.

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

1.2.35. “**Development Agreement Statute**” shall have the meaning set forth in Recital M.

1.2.36. “**Development Capacity**” shall have the meaning set forth in the Affordable Housing Plan in Exhibit K to this Agreement

1.2.37. “**Development Phase(s)**” shall mean Phase 1 and the Subsequent Phases as set forth in Exhibit F.

1.2.38. “**Development Phase Application**” shall have the meaning set forth in Section 3.4.5.

1.2.39. “**Development Phase Approval**” shall have the meaning set forth in Section 3.4.5.

1.2.40. “**Director**” or “**Planning Director**” shall mean the Director of Planning of the City and County of San Francisco.

1.2.41. “**DPW**” shall mean the San Francisco Department of Public Works.

1.2.42. “**Effective Date**” shall have the meaning set forth in Section 1.3.

1.2.43. “**Enacting Ordinance**” shall have the meaning set forth in Recital S.

1.2.44. “**Event of Default**” shall have the meaning set forth in Section 12.2.

1.2.45. “**Excusable Delay**” shall have the meaning set forth in Section 10.3.2.

1.2.46. “**Existing Standards**” shall have the meaning set forth in Section 2.2.

1.2.47. “**Extension Period**” shall have the meaning set forth in Section 3.6.5.

1.2.48. “**Federal or State Law Exception**” shall have the meaning set forth in Section 2.6.1.

1.2.49. “**FEIR**” shall have the meaning set forth in Recital H.

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

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

1.2.52. “**Future Changes to Existing Standards**” shall have the meaning set forth in Section 2.3.

1.2.53. “**General Grocery**” shall mean, consistent with Section 790.102(a) of the Planning Code, an individual retail food establishment that: (a) offers a diverse variety of unrelated, non-complementary food and non-food commodities, such as beverages, dairy, dry goods, fresh produce and other perishable items, frozen foods, household products, and paper goods; (b) may provide beer, wine, and/or liquor sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-sale general) within the accessory use limits as set forth in Section 703.2(b)(1)(C)(vi) of the Planning Code; (c) Prepares minor amounts or no food on-site for immediate consumption; and (d) markets the majority of its merchandise at retail prices.

1.2.54. “**General Plan Consistency Findings**” shall have the meaning set forth in Recital Q.

1.2.55. “**Gross Floor Area**” shall have the meaning set forth in Planning Code section 102.9.

1.2.56. “**Horizontal Obligation**” shall have the meaning set forth in Section 12.2.

1.2.57. “**Impact Fees and Exactions**” shall mean the fees, exactions and impositions charged by the City in connection with the development of the Project under the Existing Standards as of the Effective Date, as more particularly described on Exhibit E attached hereto, including but not limited to transportation improvement fees, water capacity charges and wastewater capacity charges, child care in-lieu fees, affordable housing fees, dedication or reservation requirements, and obligations for on- or off-site improvements. Impact Fees and Exactions shall not include Mitigation Measures, Processing Fees, permit and application fees, taxes or special assessments, and water connection fees. Water connection fees shall be limited to the type of fee assessed by the SFPUC for installing metered service for each building or units within such building.

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

1.2.59. “**Indemnify**” shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.60. “**Infrastructure Plan**” shall mean the Schlage Lock Infrastructure Plan, dated as of May 28, 2014, as amended from time to time.

1.2.61. “**Losses**” shall have the meaning set forth in Section 6.13.

1.2.62. “**Low Income Household**” shall mean a household whose combined annual gross income for all members does not exceed fifty-five percent (55%) (for rental housing) and 90% (for for-sale housing) of the median income for the City and County of San Francisco, as calculated by MOHCD using data from the United States Department of Housing and Urban Development (or, if unavailable, alternative data used by MOHCD for such purposes) and adjusted for household size.



1.2.63. “**Market Rate Units**” shall mean housing units constructed on the Project Site that are not BMR Units.

1.2.64. “**Material Change to the Basic Approvals**” shall mean any substantive and material change to the Project, as defined by the Basic Approvals, as reasonably determined by the Planning Director and/or an affected City Agency. Without limiting the foregoing, the following shall each be deemed a Material Change to the Basic Approvals: (i) any change in the permitted uses or building heights contained in the Planning Code text amendment and the Zoning Map amendment; (ii) any increase in the parking ratios above the maximum ratios set forth in the Design for Development; (iii) any increase or reduction of more than ten percent (10%) in the size of required Public Improvements or any park or open space designated as a Community Improvement, unless such change is approved as an Alternate Community Improvement in accordance with the terms of this Agreement.

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

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

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

1.2.68. “**MOHCD**” shall mean the San Francisco Mayor’s Office of Housing and Community Development.

1.2.69. “**Municipal Code**” shall mean the San Francisco Municipal Code. The Municipal Code can currently be found at <http://www.amlegal.com/library/ca/sfrancisco.shtml>.

1.2.70. “**Non-City Regulatory Approval**” shall have the meaning set forth in Section 3.6.1.

1.2.71. “**Non-City Responsible Agency**” or “**Non-City Responsible Agencies**” shall have the meaning set forth in Section 3.6.1.

1.2.72. “**Notice of Default**” shall have the meaning set forth in Section 12.2.

1.2.73. “**Objective Requirements**” shall have the meaning set forth in Section 3.3.1.

1.2.74. One hundred percent (100%) affordable shall have the meaning set forth in Planning Code Section 415.3 (c) (4).

1.2.75. On-site BMR shall have the meaning set forth in Planning Code Section 401.

1.2.76. Off-site BMR shall have the meaning set forth in Planning Code Section 401.

1.2.77. “**OEWD**” shall mean the San Francisco Office of Economic and Workforce Development.

1.2.78. “**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.

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

1.2.80. “**Permitted Change**” shall have the meaning set forth in Section 11.5.

1.2.81. “**Phasing Plan**” shall mean the Phasing Plan attached hereto as Exhibit F.

1.2.82. “**Planning Code**” shall mean the San Francisco Planning Code.

1.2.83. “**Planning Commission**” or “**Commission**” shall mean the Planning Commission of the City and County of San Francisco.

1.2.84. “**Planning Department**” shall mean the Planning Department of the City and County of San Francisco.

1.2.85. “**Principal Project**” shall have the meaning set forth in Section 401 of the Planning Code.

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

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

All Privately-Owned Community Improvements are required as a condition of regulatory approval of this Project by the City.

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

1.2.89. “**Project**” shall mean the development project at the Project Site as described in this Agreement and the Schlage Lock Development Plan Documents, including the Public Improvements and the Community Improvements, which development project is consistent with the Basic Approvals and the Implementing Approvals.

1.2.90. “**Project Site**” shall have the meaning set forth in Recital A.

1.2.91. “**Proportionality, Priority and Proximity Requirement**” shall have the meaning set forth in Section 3.4.2.

1.2.92. “**Public Health and Safety Exception**” shall have the meaning set forth in Section 2.6.1.

1.2.93. “**Public Improvements**” shall mean the facilities, both on- and off-site, to be improved, constructed and dedicated to the City. Public Improvements include streets within the Project Site, sidewalks, Stormwater Management Improvements in the public right-of-way, all public utilities within the streets (such as gas, electricity, water and sewer lines but excluding any non-municipal utilities), bicycle lanes and paths in the public right of way, off-site intersection improvements (including but not limited to curbs, medians, signaling, traffic controls devices, signage, and striping), SFMTA Infrastructure, and possibly parks. The Public Improvements will be reflected on separate improvement plans and clearly delineated from Privately-Owned Community Improvements, which Privately-Owned Community Improvements include paseos, pedestrian paths within the Project Site, community or recreation facilities, and possibly certain parks and open spaces to be built on land owned and retained by Developer. All Public Improvements shall be built based on the improvement plans approved by the City. Sufficient construction bonds or guarantees, based on the amount required to complete the Public Improvements as determined from the approved public improvement plan must also be submitted as required by the City consistent with the Subdivision Map Act and the San Francisco Subdivision Code.

All Public Improvements are required as a condition of regulatory approval of this Project by the City.

1.2.94. “**Recorded Restrictions**” shall refer to restrictions running with the land as described in Section 4.1.3.

1.2.95. “**Rent Ordinance**” shall mean the City’s Residential Rent Stabilization and Arbitration Ordinance (Chapters 37 and 37A of the Administrative Code) or any successor ordinance designated by the City.

1.2.96. “**Schlage Lock**” shall mean the Project Site.

1.2.97. “**Schlage Lock Development Plan Documents**” shall mean the Schlage Lock Design for Development, the Transportation Demand Management Plan, the Sustainability

Evaluation, the Infrastructure Plan, and the Open Space and Streetscape and Master Plan, all dated as of May 2014, and approved by the Board of Supervisors, as each may be revised or updated in accordance with this Agreement, and the Phasing Plan, Transportation Demand Management Plan, and Infrastructure Plan as attached hereto as exhibits and as incorporated herein; and the forthcoming Sustainability Evaluation required by Section 6.5. A copy of each of the approved Schlage Lock Development Plan Documents, including any approved amendments, will be maintained and held by the Planning Department.

1.2.98. “**Schlage Lock Special Use District**” shall have the meaning set forth in Section 3.3.1.

1.2.99. “**Section 56.17**” shall mean Administrative Code section 56.17 as of the Effective Date.

1.2.100. “**SFFD**” shall mean the San Francisco Fire Department.

1.2.101. “**SFMTA**” shall mean the San Francisco Municipal Transportation Agency.

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

1.2.103. “**SFPUC**” shall mean the San Francisco Public Utilities Commission.

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

All Stormwater Management Improvements are required as a condition of regulatory approval of this Project.

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

1.2.106. “**Subdivision Code**” shall mean the San Francisco Subdivision Code, with such additions and revisions as set forth in Exhibit N to this Agreement.

1.2.107. “**Substitute Community Improvement**” shall have the meaning set forth in Section 3.6.4.

1.2.108. “**Sustainability Evaluation**” shall mean an evaluation of site-wide energy, water or other on-site infrastructure systems that promote greater levels of sustainability beyond required City requirements and Green Building Codes.

1.2.109. “**TDM**” shall have the same meaning as defined in the Transportation Demand Management Plan as set forth in Exhibit J to this Agreement.

1.2.110. “**Term**” shall have the meaning set forth in Section 1.4.

1.2.111. “**Third-Party Challenge**” shall have the meaning set forth in Section 8.3.1

1.2.112. “**Transfer**” shall mean the transfer all or any portion of Developer’s rights, interests, or obligations under this Agreement, together with the conveyance of the affected real property.

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

1.2.114. “**Transportation Demand Management Plan**” shall mean the Schlage Lock Development Transportation Demand Management Plan, dated as of April 29, 2014 as amended from time to time.

1.2.115. “**Uniform Codes**” shall have the meaning set forth in Section 2.3.4.

1.2.116. “**Vertical Obligation**” shall have the meaning set forth in Section 12.2.

1.2.117. “**Zoning Map Amendment**” shall mean have the meaning set forth in Recital J.

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

1.4. Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years thereafter so as to accommodate the phased development of the Project, unless extended or earlier terminated as provided herein (“**Term**”). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

## 2. VESTING AND CITY OBLIGATIONS

2.1. Vested Rights. Developer shall have the vested right, subject to the terms of this Agreement, to develop the Development Phases as set forth in Exhibit F, with the following vested elements (collectively, the “**Vested Elements**”):

2.1.1. A land use program of up to 1,679 new residential units, up to 46,700 square feet of retail use, renovation of the Schlage Lock Historic Office Building, and associated parking, all as more particularly described in the Basic Approvals;

2.1.2. Construction of buildings on the Project Site up to the maximum heights permissible under the Design for Development document and in a manner consistent with the Zoning Map, the Visitacion Valley/Schlage Lock Special Use District, and the Design for Development Document, which specify the: (1) locations and numbers of buildings proposed; (2) the land uses and height and bulk limits, including the maximum density and intensity; (3) the permitted uses; (4) the provisions for vehicular access and parking; (5) the reservation or dedication of land for public purposes; and (6) provision for construction of Public Improvements as defined herein.

2.1.3. The Vested Elements are subject to and shall be governed by Applicable Laws as defined in Section 2.2 below. The expiration of any building permit or other approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Implementing Approvals at any time during the Term, any of which shall be governed by Applicable Laws. Each Implementing Approval, once granted, shall be deemed an approval for purposes of this Section 2. The Parties acknowledge that the Development Phases require separate approvals and findings, and nothing shall prevent or limit the discretion of the City in connection therewith, except for the express limitations in Section 6.2 and in Future Changes to Existing Standards as provided in Section 2.3.

2.2. Existing Standards. The City shall process, consider, and review all Development Phases in accordance with (i) the Basic Approvals, (ii) the San Francisco General Plan, the San Francisco Municipal Code (including the Subdivision Code) and all other applicable City policies, rules and regulations as each of the foregoing is in effect on the Effective Date (“**Existing Standards**”), as the same may be amended or updated in accordance with permitted Future Changes to Existing Standards as set forth in Section 2.3 , and (iii) this Agreement (collectively, “**Applicable Laws**”).

2.3. Future Changes to Existing Standards. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date (“**Future Changes to Existing Standards**”) shall apply to the Project and the Development Phases except to the extent they conflict with this Agreement or the terms and conditions of the Basic Approvals. In the event of such a conflict, the terms of this Agreement and the Basic Approvals shall prevail, subject to the terms of Section 2.6 below.

2.3.1. Future Changes to Existing Standards shall be deemed to conflict with the Applicable Laws or Vested Elements if they:

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

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

(c) limit or reduce vehicular access or parking on the Site from that permitted under this Agreement, the Existing Standards, or the Basic Approvals;

(d) change or limit any land uses or height and bulk limits for the Development Phases that are permitted under this Agreement, the Existing Standards, the Basic Approvals or the Existing Uses;

(e) change or limit the Basic Approvals or Existing Uses; except as required by Section 2.6, materially limit or control the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of a Development Phase in any manner;

(f) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except as otherwise provided in Section 2.2; limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for a Development Phase as contemplated by the Basic Approvals;

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

(h) impose or increase any Impact Fees and Exactions, as they apply to the Project, except as permitted under Section 2.4 of this Agreement.

2.3.2. Developer may elect to have a Future Change to Existing Standards that conflicts with this Agreement and the Basic Approvals applied to the Project or the Development Phases by giving the City notice of its election to have a Future Change to Existing Standards applied, in which case such Future Change to Existing Standards shall be deemed to be an Existing Standard; provided, however, if the application of such Future Change to Existing Standards would be a material change to the City's obligations hereunder, the application of such Future Change to Existing Standards shall require the concurrence of any affected City Agencies. Nothing in this Agreement shall preclude the City from applying Future Changes to Existing Standards to the Site for any development project not within the definition of the "**Project**" under this Agreement. In addition, nothing in this Agreement shall preclude Developer from pursuing any challenge to the application of any Future Changes to Existing Standards to all or part of the Site.

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

2.3.4. The Parties acknowledge that, for certain parts of the Project, Developer must submit a variety of applications for Implementing Approvals before commencement of construction, including building permit applications, street improvement permits, and encroachment permits. Developer shall be responsible for obtaining all Implementing Approvals before commencement of construction to the extent required under applicable Law. Notwithstanding anything in this Agreement to the contrary, when considering any such application for an Implementing Approval, the City shall apply the applicable provisions, requirements, rules, or regulations that are contained in the California Building Standards Code, as amended by the City, including requirements of the San Francisco Building Code, Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code or other uniform construction codes ("**Uniform Codes**").

2.3.5. Developer shall have the right to file subdivision map applications (including phased final map applications) with respect to some or all of the Development Phases, to subdivide, reconfigure or merge the parcels comprising the Development Phases as may be necessary or desirable in order to develop a particular part of the Project. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Site for purposes of sale, lease or financing in any manner that conflicts with the California Subdivision Map Act (California Government Code § 66410 et seq.), or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Basic Approvals as set forth in Section 1.2.8.

## 2.4. Fees and Exactions.

2.4.1. Generally. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 2.4, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 2 are intended to implement the intent of the Parties that Developer has the right to develop the Project pursuant to specified and



known criteria and rules at the Effective Date, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

2.4.2. Impact Fees and Exactions. Impact Fees and Exactions for the Development Phases (or components thereof) shall be limited to those from time to time in effect, on a City-Wide basis, at the time that Developer applies for or obtains, as applicable, a permit, authorization or approval in connection therewith. After the Effective Date, except as set forth below in this Section 2.4.2, and as listed in Exhibit E, no new categories of Impact Fees and Exactions (nor expansion of the application of same due to changes in exceptions or definitions of covered uses thereto) shall apply to the development of the Development Phases. Any substitute Impact Fees and Exactions that amend or replace the Impact Fees and Exactions in effect on the Effective Date shall not be considered new categories of Impact Fees and Exactions except to the extent that they expand the scope of the existing Impact Fees and Exactions. In other words, if the City amends or replaces Impact Fees and Exactions during the Term to both increase the rates and expand the scope of application (i.e., apply the Impact Fees and Exactions to a use that was not previously subject to that Impact Fees and Exactions), then the increase in rates (including the methodology for calculation of those rates) would apply to the Development Phases but not the expanded scope. Notwithstanding anything to the contrary above, Developer shall be responsible for the payment of the following fees and charges, if and to the extent applicable: (i) all Impact Fees and Exactions for future development on the Site, in effect at the time of assessment as included in Exhibit E, and (ii) the SFPUC water capacity charges and wastewater capacity charges and connection fees, in effect at the time of assessment.

2.4.3. Processing Fees. For three (3) years following the Effective Date, as may be extended by the number of days in any extension of the Term under Section 10, Processing Fees for the Development Phases shall be limited to the Processing Fees in effect, on a City-Wide basis, as of the Effective Date (provided that to the extent Processing Fees are based on time and materials costs, such fees may be calculated based on the schedule for time and materials costs in effect on the date the work is performed by the City). Thereafter, Processing Fees for the Development Phases shall be limited to the Processing Fees in effect, on a City-Wide basis, at the time that Developer applies for the permit or approval for which such Processing Fee is payable in connection with the applicable portion of the Development Phase.

2.5. Limitation on City's Future Discretion. By approving the Basic Approvals, the City has made a policy decision that the Project is in the best interests of the City and promotes the public health, safety and general welfare. Accordingly, the City in granting the Approvals and, as applicable, vesting the Project through this Agreement is limiting its future discretion with respect to the Development Phases and Implementing Approvals to the extent that they are consistent with the Basic Approvals and this Agreement. For elements included in a request for an Implementing Approval that have not been reviewed or considered by the applicable City Agency previously (including but not limited to additional details or plans for a proposed building), the City Agency shall exercise its discretion consistent with its customary practice but shall not deny issuance of an Implementing Approval based upon findings that are consistent with the Basic Approvals and this Agreement. Consequently, the City shall not use its

discretionary authority to change the policy decisions reflected by the Basic Approvals and this Agreement or otherwise to prevent or to delay development of the Development Phases as contemplated in the Basic Approvals and this Agreement. Nothing in the foregoing shall impact or limit the City's discretion with respect to: (i) proposed Implementing Approvals that seek a Material Change to the Basic Approvals, or (ii) Board of Supervisor approvals of subdivision maps, as required by law, not contemplated by the Basic Approvals.

2.6. Changes in Federal or State Laws.

2.6.1. City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny an Implementing Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public or (ii) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Basic Approvals or this Agreement and (iii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on this Public Health and Safety Exception or the Federal or State Law Exception.

2.6.2. Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 3, as applicable.

2.6.3. Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of 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.

2.6.4. Termination of Agreement. If any of the modifications, amendments or additions described in Section 2.3 or any changes in Federal or State Laws described thereunder would materially and adversely affect the construction, development, use, operation or

occupancy of the Development Phases as currently contemplated by the Basic Approvals, or any material portion thereof, such that the Development Phases become economically infeasible (a “**Law Adverse to Developer**”), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 2.3 or any changes in Federal or State Laws described thereunder would materially and adversely affect or limit the public benefits (a “**Law Adverse to the City**”), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under Section 2.6.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the applicable Community Improvements which have become obligations of Developer based on the schedule of performance and the Phasing Plan

2.7. No Action to Impede Basic Approvals. Except and only as required under Section 7.1 the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement, Applicable Laws, or the Vested Elements. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Basic Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 2.3.1 of this Agreement.

2.8. Criteria for Approving Implementing Approvals. The City shall not disapprove applications for Implementing Approvals based upon any item or element that is consistent with this Agreement, Applicable Laws, and the Vested Elements, and shall consider all such applications in accordance with its customary practices subject to the requirements of this Agreement, including Section 3.8.1. The City may subject an Implementing Approval to any condition that is necessary to bring the Implementing Approval into compliance with Applicable Laws and this Agreement. The City shall in no event be obligated to approve an application for an Implementing Approval that would effect a Material Change. If the City denies any application for an Implementing Approval that implements a Development Phase as contemplated by the Basic Approvals, the City must specify in writing the reasons for such denial, which reasons may include how the application for an Implementing Approval is inconsistent with this Agreement and the Basic Approvals (if such inconsistencies are determined to exist), and the City shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City’s satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws, and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement. The City agrees to rely on the FEIR, to the greatest extent

possible, as more particularly described in Recital H. With respect to any Implementing Approval that includes a proposed change to a Development Phase, the City agrees to rely on the General Plan Consistency Findings to the greatest extent possible in accordance with Applicable Laws; provided, however, that nothing shall prevent or limit the discretion of the City in connection with any Implementing Approvals that, as a result of amendments to the Basic Approvals, require new or revised General Plan consistency findings. The Parties acknowledge that the Development Phases may require separate approvals and findings, and nothing shall prevent or limit the discretion of the City in connection therewith, except as otherwise provided in Section 3.3.

2.9. Construction of Public Improvements. The City's or Developer's construction of the Public Improvements shall be governed by the provisions of the public improvement plan.

2.10. Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 et seq.) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Site unless the new district is City-Wide or Developer gives its prior written consent to such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at any or all of the Development Phases. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

### **3. DEVELOPMENT OF PROJECT SITE**

3.1. Development Rights. Developer shall have the vested right to develop the Project Site in accordance with and subject to the provisions of this Agreement as set forth in Section 2.1, the Basic Approvals, and any Implementing Approvals, and the City shall process all Implementing Approvals related to development of the Project Site in accordance with and subject to the provisions of this Agreement. Developer agrees that all improvements it constructs on the Project Site shall be done in accordance with this Agreement, the Basic Approvals, and any Implementing Approvals, and in accordance with all applicable laws.

3.2. Compliance with CEQA. The Parties acknowledge that the FEIR prepared for the Schlage Lock Development Project ("**Project**") with the accompanying Addenda complies with CEQA. The Parties further acknowledge that (i) the FEIR and CEQA Findings contain a thorough analysis of the Project and possible alternatives to the Project, (ii) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (iii) the Board of Supervisors adopted a statement of overriding considerations in connection with the Project Approvals, pursuant to CEQA Guidelines section 15093, for those significant impacts that could not be mitigated to a less than significant level. An EIR Addendum and related findings were prepared and administratively approved for the amendments to the site design and development program. For these reasons, the City does not intend to conduct any further environmental review or mitigation under CEQA

for any aspect of the Project vested by this Agreement, as more particularly described by the Basic Approvals, except as may be required by applicable law in taking future discretionary actions relating to the Project.

3.3. Vested Rights; Permitted Uses and Density; Building Envelope. By approving the Basic Approvals, the City has made a policy decision that the Project, as currently described and defined in the Basic Approvals, is in the best interest of the City and promotes the public health, safety and general welfare. Accordingly, the City in granting the Basic Approvals and vesting them through this Agreement is limiting its future discretion with respect to Project approvals that are consistent with the Basic Approvals. Consequently, the City shall not use its discretionary authority in considering any application for an Implementing Approval to change the policy decisions reflected by the Basic Approvals or otherwise to prevent or to delay development of the Project as set forth in the Basic Approvals. Instead, Implementing Approvals that substantially conform to or implement the Basic Approvals, subsequent Development Phase Approvals, and subsequent Design Review Approvals shall be issued by the City so long as they substantially comply with and conform to this Agreement, the Basic Approvals, the Design for Development, the Open Space Streetscape Master Plan (“**OSSMP**”) and the Infrastructure Plan, if applicable. Nothing in the foregoing shall impact or limit the City’s discretion with respect to (i) Implementing Approvals that seek a Material Change to the Basic Approvals, (ii) Board of Supervisor approvals of subdivision maps, as required by law, or (iii) requests for approval that may materially impair, alter or decrease the scope and economic benefit of the Community Improvements described in the Plan Documents related to the Schlage Lock Development Project and this Agreement.

3.3.1. Design Review Approvals. The Basic Approvals include a Planning Code text amendment that creates a special use district and incorporates a Design for Development document and an Open Space and Streetscape Masterplan for the Project Site (the “**Visitacion Valley/Schlage Lock Special Use District**”). The Visitacion Valley/Schlage Lock Special Use District, the Visitacion Valley/Schlage Lock Design for Development, and the Open Space and Streetscape Master Plan were created and adopted to ensure that the urban, architectural and landscape design of the buildings, public realm and Community Improvements at Schlage Lock will be of high quality and appropriate scale, include sufficient open space, and promote the public health, safety and general welfare. To ensure that all new buildings, the new public realm and any Community Improvements related to implementation of the Project meet the Design for Development Standards and OSSMP applicable to the Schlage Lock Development Project, Developer must undergo a design review process (“**Design Review**”) and obtain design review approval (a “**Design Review Approval**”) before obtaining separate permits consistent with Section 3.4.5 of this Agreement to commence construction of any proposed building or Community Improvement within or adjacent to the Project Site (as more particularly described in the Visitacion Valley/Schlage Lock Special Use District). Building and/or site permit applications for the Design Review process for any and all parcels and community improvements within a Phase may be filed concurrently with or subsequent to a Phase Application. The Planning Director or his or her designee shall review and approve, disapprove, or approve with recommended modifications each design in accordance with the requirements of this Agreement, the Schlage Lock Development Project Documents, the applicable Phase Application, and the procedures specified in the Visitacion Valley/Schlage Lock Special Use District section of the Planning Code, as the same may be amended from time

to time. Notwithstanding anything to the contrary in this Agreement, the City may exercise its reasonable discretion in approving the aspects of a Design Review Application that relate to the qualitative or subjective requirements of the applicable Design for Development, including the choice of building materials and fenestration. Also notwithstanding anything to the contrary in this Agreement, in considering the Design Review for those aspects of a proposed building or Community Improvement that meet the quantitative or objective requirements of the Schlage Lock Development Project Design for Development and the other Schlage Lock Development Plan Development Project Documents (the “**Objective Requirements**”), including without limitation, the building’s proposed height, bulk, setbacks, location of uses and size of such uses, and amount of open space and parking, the City acknowledges and agrees that (i) it has exercised its discretion in approving the Visitacion Valley/Schlage Lock Special Use District, the Schlage Lock Development Project Design for Development, and the other Schlage Lock Development Plan Documents, and (ii) any proposed Design Review that meets the Objective Requirements shall not be rejected by the City based on elements that conform to or are consistent with the Objective Requirements, so long as the proposed building or Community Improvement meets the Uniform Codes and the Design for Development as required by Section 2.3.4 above. If the Planning Director determines that a building and/or site permit application for Design Review includes a Material Change to the Basic Approvals, the Developer must obtain Planning Commission approval of that change. The Planning Director may, at his or her discretion, consult with any other City agency, and shall determine if any other City Agency’s approval is required before a particular Material Change to the Basic Approvals can be brought before the Planning Commission.

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

3.4. Commencement of Construction; Development Phases; Development Timing.

3.4.1. Development Phases. The Project shall be built in phases (“**Development Phases**”) in the manner described in Exhibit F. The Parties currently anticipate that the Project will be constructed in Development Phases over approximately fifteen (15) years. Notwithstanding the schedule for implementation of Phase 1 as included in the Phasing Plan attached hereto as Exhibit F, the Parties acknowledge that for all subsequent phases, the Developer cannot guarantee the exact timing in which Development Phases will be constructed, whether certain development will be constructed at all, or the characteristics of each Development Phase (including without limitation the number of units constructed during each Development Phase and the parcels included within each Development Phase). Such decisions depend on numerous factors that are not within the control of Developer or the City, such as market absorption and demand, interest rates, availability of project financing, competition, and other similar factors. To the extent permitted by this Agreement, including those restrictions on the initiation of the First Phase of the Development Phases as such restrictions are provided in the Phasing Plan, Developer shall have the right to develop the Project in Development Phases in such order and time, and with such characteristics (subject to the Proportionality, Priority and

Proximity Requirements of this Agreement), as Developer requests, as determined by Developer in the exercise of its subjective business judgment, but subject to the City's approval of each Development Phase, which approval shall not be unreasonably withheld, conditioned, or delayed.

3.4.2. Proportionality, Priority and Proximity Requirement. Because (i) the Project will be built over a long time period, and future portions of the Project may not, in fact, be developed after Developer completes a Development Phase, and (ii) Developer has requested and the City has agreed to allow Developer flexibility in the order and timing of the proposed development included in the Project, the City must approve each Development Phase Application to ensure that (A) the BMR dwelling units and Community Improvements for each Development Phase are within the cumulative minimums described in this Agreement to ensure the orderly development of the Project and permit the cumulative amount of market rate private development to occur in that Development Phase; (B) the Community Improvements are implemented in order of public policy priority as set forth in the Phasing Plan; (C) that such Community Improvements are selected with reference to geographic proximity to the proposed Development Phase, if required by the Phasing Plan; and (D) the timing and phasing of the Community Improvements are consistent with the operational needs and plans of the affected City Agencies, (the "**Proportionality, Priority and Proximity Requirement**"). With regard to those Public Improvements that must be completed as determined by City review to obtain First Certificates of Occupancy for a building, the Proportionality, Priority and Proximity Requirement shall be deemed to be satisfied by virtue of the requirement that, pursuant to existing Municipal Code, all such improvements must be substantially complete before issuance of a First Certificate of Occupancy for each and every building within the Development Phase. With regard to any proposed Community Improvements not associated with any individual building permit application, the City must review and approve such permit applications to ensure that the Proportionality, Priority and Proximity Requirement is satisfied. The foregoing notwithstanding, nothing in this Section 3.4.2 or other provisions of this Agreement shall affect the Mitigation Measures, which must be completed as and when required based upon the trigger dates established with respect to each applicable Mitigation Measure.

3.4.3. Phasing Plan. The Community Improvements and certain Public Improvements to be constructed by Developer are listed in the Phasing Plan and shall be approved with the Basic Approvals, attached hereto as Exhibit F. The Phasing Plan reflects the Parties' mutual acknowledgement that (i) the approximate minimum number of residential units and the minimum area suitable for retail in Development Phase 1 are generally described in the Phasing Plan but may be subject to change, (ii) the content and boundaries of each subsequent Development Phase, the exact number of residential units and the exact amount of retail area in each subsequent Development Phase will be proposed by the Developer at the time of each Phase Application, and (iii) the need for certain Community Improvements and certain Public Improvements is related to the location of the development as proposed by each Development Phase combined with the cumulative amount of residential units and retail floor area Completed to date. The Affordable Housing Plan, as provided in Exhibit K, defines certain minimum requirements for the production of below market rate dwelling units to aid in determining satisfaction of the Proportionality, Priority and Proximity Requirement described in Section 3.4.2. The Parties agree that the requirements of the Phasing Plan are generally representative of the Proportionality, Priority and Proximity Requirement but are not

determinative such that the City must reasonably review and approve each Development Phase Application for consistency with the Proportionality, Priority and Proximity Requirement pursuant to Section 3.4.2. The Parties acknowledge and agree that (i) the minimum requirements for the production of below market rate dwelling units specified for each Development Phase of the Phasing Plan must be satisfied at or before each stage of development, including during and within each Development Phase and (ii) the City cannot disproportionately burden a Development Phase in violation of the Proportionality, Priority and Proximity Requirement. The Parties acknowledge that certain infrastructure or utility improvements may be required at an early stage of development in accordance with operational or system needs and the City may reasonably request Developer to advance certain Community Improvements at such earlier stage in order for efficiency and cost effectiveness. The Parties shall cooperate in good faith to amend the Developer's originally proposed Development Phase Application to advance such improvements and to delay other improvements while maintaining the Proportionality, Priority and Proximity Requirement.

3.4.4. Development Phase Applications Review and Approvals. Prior to the commencement of each Development Phase, Developer shall submit to the Planning Department an application (a "**Development Phase Application**") in substantial conformance with the checklist attached hereto as Exhibit G. In addition to any necessary permits the Application shall include, at a minimum: (i) an overall summary of the proposed Development Phase; (ii) a site plan that clearly indicates the parcels subject to the proposed Development Phase; (iii) the amount of residential units and retail and commercial square footage in the proposed Development Phase; (iv) the number of BMR Units to be Completed during the proposed Development Phase and the method of delivering those BMR units (e.g., inclusionary, land-dedication, and/or off-site); (v) a description and approximate square footage of any land to be dedicated to the City in the proposed Development Phase; (vi) a brief description of each proposed Community Improvement and Mitigation Measure to be Completed during the proposed Development Phase; (vii) a description of the proposed infrastructure improvements, at a level of detail as required by DPW, that are consistent with the Infrastructure Plan; (viii) a general description of the proposed order of construction of the private development and Community Improvements within the proposed Development Phase; and (ix) a statement describing any requested modification or deviation from any applicable Plan Document, if any such modifications or deviations are requested. If Developer submits a Development Phase Application before the completion of a previous Development Phase, then the Development Phase Application shall include a proposed order of development for the future Development Phases in its response to item (viii) above. The Planning Director and affected City Agencies shall have the right to request additional information from Developer as may be needed to understand the proposed Development Phase Application and to ensure compliance with this Agreement, including but not limited to the applicable Schlage Lock Development Plan Documents and the Proportionality, Priority and Proximity Requirement. If the Planning Director or any affected City Agency objects to the proposed Development Phase Application, it shall do so in writing, stating with specificity the reasons for the objection and any items that it or they believe may or should be included in the Application in order to bring the application into compliance with the Proportionality, Priority and Proximity Requirement and this Agreement. The Planning Director and affected City Agencies agree to act reasonably in making determinations with respect to each Application, including the determination as to whether the Proportionality, Priority and Proximity Requirement has been satisfied. The Parties



agree to meet and confer in good faith to discuss and resolve any differences in the scope or requirements of an Application. If there are no objections, or upon resolution of any differences, the Planning Director shall issue to Developer in writing an approval of the Development Phase Application with such revisions, conditions or requirements as may be permitted in accordance with the terms of this Agreement (each a “**Development Phase Approval**”). The Development Phase Approval notice shall be posted for at least 14 days as follows: (i) the Planning Department shall post notice of the Application on the Planning Department’s website for the project, which is accessible to the public via the “**Complete List of Plans and Projects**” webpage, or an equivalent webpage accessible to the public and dedicated to similar public disclosure purposes; (ii) Developer shall post notice at that area of the Project Site that is the subject of the given Development Phase Approval; and (iii) the Planning Department shall provide direct mail notice to surrounding neighborhood associations.

(a) **Pre-Application Meeting.** Prior to submitting any Phase Application to the Planning Department for review, the Developer shall conduct a minimum of one pre-application meeting. The meeting shall be conducted at, or within a one-mile radius of, the Project site, but otherwise subject to the Planning Department’s pre-application meeting procedures. A Planning Department representative shall attend such meeting.

(b) **Phase Application Review.** The Planning Director, or his or her designee, and affected City Agencies shall complete review within sixty (60) days of the submittal of a complete Development Phase Application to the Planning Department.

(c) **Noticing.** After Planning Department staff review of the Phase Application and no less than thirty (30) days prior to Planning Director, or Planning Commission, action on an application, notice of the application and of a post-application meeting will be mailed to occupants within 300 feet of the subject property, anyone who has requested a block book notation, and relevant Visitation Valley neighborhood groups for a thirty (30) day review period and shall be kept on file.

(d) **Post-Application Meeting.** The City shall host a post-application meeting on or proximate to the proposed project site fifteen (15) days from the initiation of the thirty (30) day public review period. A representative of the Developer’s organization shall attend the meetings. Documentation that the meeting took place shall be submitted to the Planning Department consistent with any documentation requirements established by the Department’s procedures and shall be kept with the project file.

The City will review the proposed improvements against the requirements of the Development Agreement and accompanying design controls. All of a phase’s horizontal improvements and community benefits must receive Design Review Approval as part of the Phase Application process. Design Review Approval for vertical development may be sought concurrently with or subsequent to the applicable phase’s Phase Application process.

3.4.5. Commencement of Development Phase. Upon receipt of a Development Phase Approval, Developer shall submit a tentative subdivision map application (if not already submitted) covering all of the real property within the Development Phase. Following submittal of the tentative subdivision map application, Developer shall have the right to submit any

individual Design Review Applications and associated permits required to commence the scope of development described in each Development Phase Approval; provided, however, that the City is not required to approve such Design Review Applications until Development Phase Approval and approval of the tentative subdivision map. The Developer also has the option to submit a tentative subdivision map application for the entire site and seek approval of phased final maps for each Development Phase. Should the developer elect to proceed in this manner, the City is not required to approve a Design Review Applications until the Development Phase Approval and the Developer's submission of all required deferred materials associated with the phased final map area. Each Development Phase shall be deemed to have commenced if (i) site or building permits have been issued by the City for all or a portion of the buildings located in that Development Phase and (ii) some identifiable construction, such as grading, of all or a portion of that Development Phase has been initiated. Upon commencement of work in a Development Phase, Developer shall continue the work at a commercially reasonable pace in light of market conditions to Completion of that Development Phase, including all Community Improvements, Stormwater Management Improvements and Public Improvements within the Development Phase in accordance with applicable permits and requirements under this Agreement to ensure that there are no material gaps between the start and Completion of all work within that Development Phase, subject to any Excusable Delay or amendment of the Development Phase Approval as permitted by Section 3.4.6.

3.4.6. Amendment of a Development Phase Approval. At any time after receipt of a Development Phase Approval, Developer may request an amendment to the Development Phase Approval. Such amendment may include but is not limited to changes to the number and location of units proposed during that Development Phase, the substitution of a Community Improvement for another Community Improvement, or the elimination of a Community Improvement from the Development Phase due to a proposed reduction of new private development proposed for that Development Phase. Any such requested amendment shall be subject to the review and approval process and the standards (including the Proportionality, Priority and Proximity Requirements) set forth above in Section 3.4.2. Notwithstanding anything to the contrary above, Developer shall not have the right to eliminate any Community Improvement or Public Improvement for which construction or service has already commenced in that Development Phase.

3.4.7. Without limiting the foregoing, it is the desire of the Parties to avoid the result in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), in which the California Supreme Court held that because the parties had failed to consider and expressly provide for the timing of development, a later-adopted initiative restricting the timing of development prevailed over the parties' agreement. Accordingly, the Parties hereto expressly acknowledge that except for the construction phasing required by this Section 3, a Development Phase Approval, the Schlage Lock Development Plan Documents, the Phasing Plan, the Mitigation Measures, and any express construction dates set forth in an Implementing Approval, Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

3.5. Community Improvements, Stormwater Management Improvements and/or Public Improvements.

3.5.1. Developer Responsibilities. Developer shall undertake the design, development and installation of the Public Improvements and Community Improvements. Public Improvements shall be designed and constructed, and shall contain those improvements and facilities, as reasonably required by the applicable City Agency that is to accept, and in some cases operate and maintain, the Public Improvement in keeping with the then-current Citywide standards and requirements of the City Agency as if it were to design and construct the Public Improvement on its own at that time, including the requirements of any Non-Responsible City Agency with jurisdiction. Without limiting the foregoing, any Community Improvement, whether a Public Improvement or a Privately-Owned Community Improvement, shall obtain a Design Review Approval from the Planning Department as set forth in Section 3.3.1 of this Agreement before obtaining all necessary permits and approvals (including review of all design and construction plans) from any responsible agencies having jurisdiction over the proposed Community Improvement pursuant to Section 3.8.3 of this Agreement. Without limiting the foregoing, (i) the SFPUC must approve all of the plans and specifications for the Stormwater Management Improvements and all water, street light and sewer facilities, and (ii) DPW must approve all of the plans and specifications for all Public Improvements unless the DPW Director waives this requirement. Construction of Community Improvements must be Completed by Developer on or before issuance of the Temporary Certificate of Occupancy for any building containing residential units or commercial gross floor area permitted by the Phasing Plan in exchange for construction of such Community Improvement (or as otherwise described in a Development Phase Approval), subject to Excusable Delay. If Developer fails to complete the Community Improvement within such time frame, the City may decline to grant First Certificate of Occupancy to those residential units and commercial spaces, cease issuing any further Project approvals, not accept any additional applications for the Project, and include in any estoppel certificate language reflecting Developer's failure to complete such Community Improvements. In addition, failure to continue to diligently prosecute such Community Improvement to Completion shall, following notice and cure as set forth in Section 12.2, be an Event of Default. Notwithstanding the above, the Developer may propose interim or temporary Public Improvements, and DPW, with the consent of any affected City Agency in their respective sole discretion, may allow such interim or temporary Public Improvements and defer completion of required Public Improvements subject to terms and conditions that the City deems appropriate. The subject public improvement agreement shall address the interim or temporary Public Improvements along with sufficient security to guarantee the completion and removal of such Improvements and security for the permanent Public Improvements. The City will not accept any interim or temporary Public Improvements for maintenance and liability purposes.

3.5.2. Dedication of Public Improvements. Upon Completion of each Public Improvement in accordance with this Agreement, Developer shall dedicate and the City shall accept the Public Improvements, as agreed to by the parties. The City, in its sole discretion, may agree to accept component parts of each Public Improvement; provided, however, that the SFPUC shall not determine the completeness of or accept the public utility infrastructure that is under or within an uncompleted roadway. For the SFPUC to determine the completeness of or accept water, sewer or storm drain infrastructure and for the SFPUC to ensure regulatory and operational requirements are met, the water, sewer or storm drain infrastructure shall either have an appropriate hydraulic connection to a permanent, completed, and accepted water, sewer or storm drain infrastructure or have a permanent connection to an existing SFPUC water, sewer or storm drain infrastructure. If the water, sewer or storm drain infrastructure is intended to

operate with adjacent infrastructure (for example, pump stations or stormwater management controls) or any Public Improvement is intended to operate with adjacent Public Improvements or existing City infrastructure, the Developer shall construct all components of the system prior to acceptance of any piece of the infrastructure unless DPW with the consent of the SFPUC or any other affected City Agency approves an exception to this requirement on a case-by-case basis. DPW's and the SFPUC's recommendation for final acceptance of utility infrastructure intended for public use shall be contingent on testing that the Developer performs and the City witnesses. The Developer shall provide this testing at no additional cost to the City.

3.5.3. Maintenance and Operation of Community Improvements by Developer and Successors. The Parties agree that Developer, or its successors or assignees shall, in perpetuity, own, operate and maintain in good and workmanlike condition, and otherwise in accordance with all applicable laws and any applicable permits, all Community Improvements, Public Improvements, and permitted encroachments on the public-right-of-way that the City does not accept for maintenance. A map of the Project Site identifying all Community Improvements and Public Improvements subject to this on-going service, maintenance and operations obligation, and the respective land area of each sub-category of space (including, for example, the park and open space system, sidewalk and streetscape areas, etc.) is attached hereto as Exhibit H and incorporated herein. The provisions of this Section 3 shall survive the expiration of this Agreement. In order to ensure that the Community Improvements owned by Developer are maintained in a clean, good and workmanlike condition, Developer shall record a declaration of covenants, conditions, and restrictions (“CC&Rs”) against the portion of the Project Site on which the Community Improvement will be located, but excluding any property owned by the City as and when acquired by the City, that include a requirement that a homeowner's association or community facility district provide all necessary and ongoing maintenance and repairs to the Community Improvements and Public Improvements not accepted by the City for maintenance, at no cost to the City, with appropriate homeowners' dues and/or assessments to provide for such maintenance and services. Developer shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the homeowner's association and/or the community facility district. The CC&Rs and/or regulations of the community facility district identified herein shall be subject to reasonable review and approval by the City Attorney, OEWD, and the Planning Department prior to the issuance of the First Certificate of Occupancy for the first building constructed on the Project Site in the case of a community facility district and prior to approval of the State department of Real Estate under the Davis Stirling Community Interest Development Act in the case of CC&Rs, and shall expressly provide the City with a third-party right to enforce the maintenance and repair provisions of the responsible entities. On or before the recordation of the documents, OEWD and the Planning Department shall reasonably approve the proposed budget for the on-going maintenance and operations of the Community Improvements, based on a third-party consultant study (to be paid for by the Developer) verifying the commercial reasonableness of an initial and 10 year “build-out” budget. Notwithstanding the foregoing, if the City, acting through RPD, acquires one or both parks, consistent with the terms in Exhibit M, attached hereto, the Developer shall ensure that the costs associated with meeting all of the terms and obligations for park maintenance based on the terms in Exhibit M shall be included in the CC&Rs and/or any Community Facility District established for the Project Site

(a) Maintenance of Stormwater Management Improvements. Pursuant to the requirements of the Public Works Code, the SFPUC must approve a Stormwater Control Plan that describes the activities required by Developer to appropriately design, install, and maintain the Stormwater Management Improvements within each Development Phase as further described in the Phasing Plan in Exhibit F. Developer shall record restrictive covenants that include a requirement that the appropriate entities provide ongoing maintenance and repairs to the Stormwater Management Improvements in the manner required by the Stormwater Control Plan, at no cost to the City, with appropriate dues and or assessments to provide for such maintenance. As set forth above, Developer shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the responsible entities during the Term of this Agreement.

3.5.4. Permits to Enter City Property. Subject to the rights of any third-party and the City's reasonable agreement with respect to the scope of the proposed work and insurance or security requirements, and provided Developer is not then in default under this Agreement, each City Agency with jurisdiction shall grant permits to enter City-owned property on the City's standard form permit and otherwise on commercially reasonable terms in order to permit Developer to enter City-owned property as needed to perform investigatory work, construct Public Improvements and Stormwater Management Improvements, and complete the Mitigation Measures as contemplated by each Development Phase Approval. Such permits may include release, indemnification and security provisions in keeping with the City's standard practices.

3.6. Non-City Regulatory Approvals for Public Improvements.

3.6.1. Cooperation to Obtain Permits. The Parties acknowledge that certain Public Improvements, may require the approval of federal, state, and local governmental agencies that are independent of the City and not a Party to this Agreement ("**Non-City Responsible Agencies**"), including but not limited to the California State Department of Transportation ("**Caltrans**"), the California Public Utilities Commission ("**CPUC**"), and the Peninsula Corridor Joint Powers Board ("**JPB**"). The Non-City Responsible Agencies may, at their sole discretion, disapprove installation of such Public Improvements, making such installation impossible. The City will cooperate with reasonable requests by Developer to obtain permits, agreements, or entitlements from Non-City Responsible Agencies for each such improvement, and as may be necessary or desirable to effectuate and implement development of the Project in accordance with the Basic Approvals (each, a "**Non-City Regulatory Approval**"). The City's commitment to Developer under this Section 3.6.1 is subject to the following conditions:

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

(b) Developer shall not agree to conditions or restrictions in any Non-City Regulatory Approval that could create: (1) any obligations on the part of any City Agency,

unless the City Agency agrees to assume such obligations at the time of acceptance of the Public Improvements; or (2) any restrictions on City-owned property (or property to be owned by City under this Agreement), unless in each instance the City, including each affected City Agency, has previously approved the conditions or restrictions in writing, which approval may be given or withheld in its sole discretion.

3.6.2. Costs. Developer shall bear all costs associated with applying for and obtaining any necessary Non-City Regulatory Approval. Developer, at no cost to the City (excepting any City Cost approved by the City), shall be solely responsible for complying with any Non-City Regulatory Approval and any and all conditions or restrictions imposed as part of a Non-City Regulatory Approval, whether the conditions apply to the Project Site or outside of the Project Site. Developer shall have the right to appeal or contest any condition in any manner permitted by law imposed under any Non-City Regulatory Approval, but only with the prior consent of the affected City Agency if the City is a co-applicant or co-permittee or the appeal impacts the rights, obligations or potential liabilities of the City. If Developer demonstrates to the City's satisfaction that an appeal would not affect the City's rights, obligations or potential liabilities, the City shall not unreasonably withhold or delay its consent. In all other cases, the affected City Agencies shall have the right to give or withhold their consent in their sole discretion. Developer must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-City Regulatory Approval, and Developer shall indemnify the City for any and all Losses relating to Developer's failure to comply with any Non-City Regulatory Approval.

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

3.6.4. Notice to City. In the event that Developer has not obtained, despite its good faith diligent efforts, a necessary Non-City Regulatory Approval for a particular Community Improvement within three (3) years of Developer's or the City's application for the same, Developer, after consultation with the City regarding the most preferable approach, shall provide written notice to the City of its intention to (i) continue to seek the required Non-City Regulatory Approval from the Non-City Responsible Agency, (ii) substitute the requirement that Developer construct such Community Improvement with a requirement that Developer construct another Community Improvement listed on the Phasing Plan (a "**Substitute Community Improvement**") or (iii) substitute the requirement that Developer construct the Community Improvement with a requirement that Developer construct a new Community Improvement not listed on the Phasing Plan (an "**Alternate Community Improvement**").

3.6.5. Extensions and Negotiations for Substitute or Alternate Community Improvements. If Developer provides notice to the City of its intention to continue to seek Non-City Regulatory Approval of the Community Improvement, as permitted by Section 3.6.1, the Parties shall continue to make good faith and commercially reasonable efforts to obtain the required Non-City Regulatory Approval for a reasonable period agreed to by the Parties (the “**Extension Period**”). The Parties shall meet and confer in good faith to determine what work within the Development Phase can continue during the Extension Period in light of the failure to obtain the Non-City Regulatory Approval, subject to the Mitigation Measures and the Proportionality, Priority and Proximity Requirement. If, after the expiration of the Extension Period, Developer has not yet obtained the required Non-City Regulatory Approval for the Community Improvement, Developer, after consultation with the City regarding the most preferable approach, shall provide written notice to the City of its intention to (i) pursue a Substitute Community Improvement, or (ii) pursue an Alternate Public Improvement. The Parties, by mutual consent, may also agree in writing to an extension of the Extension Period to obtain required approvals for any Community Improvement, Substitute Community Improvement or Alternate Community Improvement, which shall not require an amendment to this Agreement.

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

3.6.7. Alternate Community Improvement. If Developer provides notice of its intention to pursue an Alternate Community Improvement pursuant to Section 3.6.4, the Parties shall make reasonable and good faith efforts to identify such Alternate Community Improvement in a timely manner. The Parties shall negotiate in good faith to reach agreement on the Alternate Community Improvement. The Parties acknowledge and agree that any Alternate Community Improvement should be designed so as to replicate the anticipated public benefits from the Community Improvement to be eliminated to the greatest possible extent but without increasing the cost to Developer of the original Community Improvement, thus maintaining the benefit of the bargain for both Parties. The estimated cost to Developer shall be determined by the methodology set forth in Section 3.6.8. In addition, any proposed Alternate Community Improvement should minimize disruptions or alterations to the Phasing Plan and Project design. The Planning Department shall review the proposed Alternate Community Improvement pursuant to the Development Phase Approval amendment process set forth in Section 3.4.6 of this Agreement. Upon City approval of such Alternate Community

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

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

3.7. Financing of Any Public Improvements. At Developer’s request, Developer and the City agree to use good faith efforts to pursue the creation of a Community Facilities District



("CFD") under the Mello-Roos Community Facilities Act of 1982 (California Government Code § 53311 et seq.) within the Project Site only to finance the capital costs for Public Improvements and maintenance and other costs for specified Community Improvements, including maintenance of the parks and open spaces in the Project Site and any ongoing commitments made by Developer, including any ongoing maintenance cost obligations to the City pursuant to the terms included in Exhibit M, attached hereto, if the City purchases one or both of the parks. Any and all costs incurred by the City in negotiating and forming a CFD shall be reimbursed to the City by the Developer. The terms and conditions of any CFD must be agreed to by both Parties, each in their sole discretion. Upon agreement on the terms and conditions for a CFD, and subject to market conditions and fiscal prudence, Developer agrees to vote in favor of the formation of the CFD and the City shall use reasonable efforts to issue or cause issuance of bonds for the formed CFD in keeping with standard City practices. Failure to form a CFD or to issue CFD bonds or other debt shall not relieve Developer of its obligations under this Agreement, including but not limited to the obligation to Complete Public Improvements or Public Improvements as and when required.

### 3.8. Cooperation.

3.8.1. Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Basic Approvals, Development Phase Approvals, Design Review Approvals, Implementing Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Basic Approvals are fulfilled during the Term. Except as specifically provided in this Agreement, the City, has no additional obligation to spend any sums of money or incur any costs other than City Costs that Developer must reimburse under this Agreement or costs that Developer must reimburse through the payment of Processing Fees. Nothing in this Agreement obligates the Developer to proceed with the Project, including without limitation filing Development Phase Applications, unless it chooses to do so in its sole discretion. The Parties may agree to establish a task force, similar to the Mission Bay Task Force, to create efficiencies and coordinate the roles of various City departments in implementing this Agreement.

(a) New Market Tax Credits. The Parties agree that should New Market Tax Credits ("NMTC") be available for the Project, the City shall cooperate with the Developer in their efforts to obtain NMTC for the Project; provided, however, that the City will not be obligated to grant NMTC to the Project and such cooperation does not include an agreement to ensure prioritization over any other project seeking NMTC.

(b) Historic Tax Credits. The Parties agree that should Historic Tax Credits be available for the Project, the City shall cooperate with the Developer in their efforts to obtain historic tax credits for the Project; provided, however, that the City will not be obligated to grant Historic Tax Credits to the Project and such cooperation does not include an agreement to ensure prioritization over any other project seeking Historic Tax Credits.

(c) Mello Roos Community Facilities District ("CFD"). The Parties agree that the City shall cooperate with the Developer to set up one or more CFD's to fund capital improvements and/or ongoing maintenance as permitted by State law including any

ongoing maintenance cost obligations to the City pursuant to the terms included in Exhibit M, attached hereto, if the City purchases one or both of the parks.

(d) Other Grants and Subsidies. The Parties agree that the Project includes a number of costs that may be eligible for various grant and subsidy programs administered by various City, State or Federal agencies, including costs associated with the development of parks, transportation infrastructure, and other facilities that will serve the greater Visitacion Valley community. Should such subsidies be available for the Project, the City shall cooperate with the Developer in their efforts to obtain those subsidies; provided, however that nothing in this section creates any obligation to award such grants or subsidies to the Developer or the Project, and any such grant or subsidy will require the provision of identified public benefits as applicable.

(e) Priority Application Processing. The Parties agree that, in consideration for the fact that all of the Project's non-income restricted housing will be affordable to middle income households based on market factors, all Project elements seeking Planning Department approval will be deemed Priority Projects under Planning Director Bulletin No. 2, Planning Department Priority Application Processing Guidelines, as revised in February 2014, and as may be amended from time to time. The various Project elements' priority levels will be as follows: Type 1 for (i) any Phase Application in which all residential units within the phase will be income restricted subject to the City's inclusionary housing requirements (i.e. a single-building phase where that single building contains only affordable housing) or (ii) a Design Review Application for a single building in which all residential units will be income restricted subject to the City's inclusionary housing requirements; Type 1A for any Phase Application or Design Review Application (for a given building or buildings) in which the cumulative total of affordable housing (consistent with Exhibit K) within the Project is equivalent to or in excess of twenty percent (20%) of the combined total of housing that is currently either built or under construction including that which is proposed for the relevant Development Phase; and Type 2 for all other Phase Applications and Design Review Applications.

To the extent that any other City Agency or department, including but not limited to the Department of Building Inspection, decides to utilize the guidelines in Planning Director Bulletin No. 2 to govern its own review and/or approval processes, the City agrees to apply these same tiers of processing priority to the Project.

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

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

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

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

(c) SFPUC. Upon submittal of an application that includes any stormwater management improvements or Public Improvements that fall under the jurisdiction of SFPUC or any public utility-related Mitigation Measure within the SFPUC's jurisdiction, the SFPUC will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFPUC's receipt of such application. The SFPUC shall also review and approve the Infrastructure Plan and the subsequent Master Utility Plans to ensure that all proposed public water and wastewater infrastructure shall meet all requirements and standards of the SFPUC. The SFPUC shall also review and approve each Development Phase Application as set forth in Exhibit G.

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

(e) DPW. Upon submittal of an application that includes any Public Improvements or Community Improvements that fall under the jurisdiction of DPW or any Mitigation Measure within the DPW's jurisdiction, DPW will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within sixty (60) days of DPW's receipt of such application. For purposes of this review, DPW shall act as the lead agency for the City and, to the extent practicable, consolidate the comments of all

affected City agencies and make a single submission to the Developer. Where an application includes any infrastructure, mitigation, or improvements falling within the jurisdiction of SFMTA, SFPUC, or SFFD, as described in subsections (b) - (d) of this section 3.8.3, and also includes infrastructure, improvements or mitigation measures within DPW's jurisdiction, the agency described in subsection (b), (c), or (d), as the case may be, shall provide comments to Developer and DPW within thirty (30) days of that agency's receipt of such application.

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

(g) RPD. Upon submittal of an application that includes a park that may be acquired by RPD at some point in the future, the RPD will review such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of RPD's receipt of such application. In addition to the foregoing, RPD will satisfy those obligations of the agency described in Exhibit M attached hereto.

3.8.4. Specific Actions by the City. Except as provided under Section 3.8.5 or 3.8.6, City actions and proceedings subject to this Agreement shall be processed through the Planning Department, as well as affected City Agencies (and when required by applicable law, the Board of Supervisors), including but not limited to complying with and implementing Mitigation Measures for which the City is responsible, reviewing feasibility studies for Mitigation Measures, or completing any subsequent environmental review at Developer's sole cost.

3.8.5. Other Actions by the City under DPW Jurisdiction. The following City actions and proceedings subject to this Agreement shall be processed through the Department of Public Works, as well as affected City Agencies (and when required by applicable law, the Board of Supervisors):

(a) Street Vacation, Dedication, Acceptance, and Other Street Related Actions. Instituting and completing proceedings for opening, closing, vacating, widening, modifying, or changing the grades of streets, alleys, sidewalks, and other public rights-of-way and for other necessary modifications of the streets, the street layout, and other public rights-of-way in the Project Site, including any requirement to abandon, remove, and relocate public utilities (and, when applicable, city utilities) within the public rights-of-way as specifically identified and approved in a Development Phase Approval, and as may be necessary to carry out the Basic Approvals and the Implementing Approvals. Notwithstanding Administrative Code Chapter 23, the Director of Real Estate is authorized to accept on behalf of the City temporary public easements related to the construction, completion, and use of Public Improvements, including temporary or interim improvements, for a period not to exceed five (5) years.

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

shall be in the form of a grant deed unless the City and any affected City Agency agree in writing to accept some other form of conveyance, including a public easement. Any such public easement shall be consistent with the standard easement that affected City agencies use in similar situations. The Developer, at no cost to the City, shall be responsible to provide all irrevocable offers of dedication, plats, legal descriptions, maps, and other materials that the City requires to complete the process to accept Public Improvements.

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

3.8.6. Other Actions by the City under Recreation and Park Jurisdiction or other City Agency.

(a) Any construction and acquisition of park land that will be under the jurisdiction of the Recreation and Park Department shall be processed through the Recreation and Park Department, as well as affected City Agencies (and when required by applicable law, the Board of Supervisors). In regard to acquisition and release of security, Section 3.8.5(b) and (c) above shall apply except that the Recreation and Park Department shall exercise the authority of DPW set forth in those sections.

(b) Any construction and acquisition of buildings on land or property that will be City owned and under the management and control of any other City Agency shall be processed through that City Agency, as well as any other affected City Agencies (and when required by applicable law, the Board of Supervisors). In regard to acquisition and release of security, Section 3.8.5(b) and (c) above shall apply except that the City Agency subject to this section shall exercise the authority of DPW set forth in Section 3.8.5(b) and (c).

3.9. Subdivision Maps.

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

3.9.2. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the California Subdivision Map Act (California Government Code § 66410 et seq.), or with the Subdivision Code.

3.9.3. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps as

such changes apply to this Project so long as such changes do not conflict with the provisions of this Agreement or with the Basic Approvals or any Implementing Approvals.

3.9.4. Pursuant to Section 65867.5(c) of the Development Agreement Statute, any tentative map prepared for the Project shall comply with the provisions of California Government Code section 66473.7 concerning the availability of a sufficient water supply.

3.10. Interim Uses. Developer may install interim or temporary uses on the Site, which uses must be consistent with those uses allowed under the Project's zoning and the Schlage Lock Special Use District. Temporary and interim users may lease property at the Project Site for an initial term of one year, with three one-year renewal options.

3.11. Public Power. SFPUC will work to meet the requirements of Section 99.2 (B) of Chapter 99 of the San Francisco Administrative Code. The Developer will cooperate with SFPUC in SFPUC's preparation of an assessment of the feasibility of the City providing electric service to the Project (the "**Feasibility Study**"). The costs of the Feasibility Study will be paid by SFPUC. SFPUC's failure to complete the Feasibility Study shall not be an event of default, but SFPUC shall not have the right to provide power except following completion of the Feasibility Study as set forth above. Should the City elect to provide electric service to the Project such service shall be provided by the City on terms and conditions generally comparable to, or better than, the electric service otherwise available to the project.

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

##### 4.1. Costa-Hawkins Rental Housing Act.

4.1.1. Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Act provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (section 1954.52(b)). Based upon the language of the Costa-Hawkins Act and the terms of this Agreement, the Parties understand and agree that Section 1954.52(a) of the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the BMR Units. This Agreement falls within the express exception to the Costa-Hawkins Act because this Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). The City and Developer would not be willing to enter into this Agreement without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code section 1954.52(a) do not apply to the BMR Units as a result of the exemption set forth in California Civil Code section 1954.52(b) or for the reasons set forth in this Section 4.1.1.

4.1.2. General Waiver. Developer, on behalf of itself and all of its successors and assigns of all or any part of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of this Agreement related to the establishment of the initial and all subsequent rental rates for the BMR Units under the Costa-Hawkins Act, and the right to evict tenants under the Ellis Act (as the Costa-Hawkins Act and Ellis Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under law, the Parties acknowledge that they are important elements of the consideration for this Agreement and the Parties should not have the benefits of this Agreement without the burdens of this Agreement. Accordingly if any Developer breaches such general covenants (by, for example and without limitation, suing to challenge the Rent Ordinance, setting higher rents than permitted under this Agreement, or invoking the Ellis Act to evict tenants at the Project Site), then such breach will be an Event of Default and City shall have the right to terminate this Agreement as to that Developer and its Affiliates as set forth in Article 12.

4.1.3. Inclusion in All Assignment and Assumption Agreements and Recorded Restrictions. Developer shall include the provisions of this Section 4.1 in any and all Assignment and Assumption Agreements, any and all Recorded Restrictions and in any real property conveyance agreements for property that includes or will include BMR Units.

4.2. Inclusionary Affordable Housing Program.

The Developer and the City, acting through MOHCD, have agreed on an inclusionary affordable housing program as more specifically described in Exhibit K attached to this Agreement.

4.3. Transportation Fee Obligation.

Developer will make a contribution to off-site transportation improvements (the “**Transportation Fee Obligations**”). Each building’s Transportation Fee Obligation will be calculated according to the fee schedule in Exhibit E, less 28 percent of that building’s baseline Visitacion Valley Community Facilities and Infrastructure Fee obligation prior to the application of any waivers. This 28 percent reduction reflects the fact that a portion of the Visitacion Valley Community Facilities and Infrastructure Fee, which is also applicable to the Project, is automatically earmarked for local transportation improvements. The first \$3 million of Transportation Fee Obligation will be waived in consideration of the following in-kind transportation improvements that will be provided by the Project in its initial years: (1) intersection mitigations identified through the CEQA process and as detailed in Exhibit I to this Agreement and (2) a portion of the on-site improvements that support pedestrian safety and transit accessibility (together, the “**Transportation Improvements**”).

4.3.1. Cost Verification. To verify the eligible costs related to the construction of the Transportation Improvements in order to determine whether such costs meet or exceed the sum of City subsidy and credits intended for these types of improvements (as provided for in this Section 4.3 and Section 7.5 of this Agreement; together, the “**City Transportation Subsidies**”), the City will require the following process:

Upon Developer's submittal to the City of the costs for the Transportation Improvements (the "**Cost Estimate**"), the City shall have forty-five (45) days to review and consider the Cost Estimate. If the City rejects the Cost Estimate, in its reasonable discretion, the City shall select a cost estimator to conduct a second Cost Estimate. After completion of the City's Cost Estimate, the Parties agree to meet and confer in good faith to reach agreement on the cost. If the Parties are not able to reach such agreement within twenty (20) days, then the two cost estimators shall select a third cost estimator who shall decide which of the two original Cost Estimates shall be used as the cost. The determination of the third cost estimator shall be binding and final.

If the agreed-upon estimate is greater than the sum of the City Subsidies, SFMTA will inform the Planning Director to apply the fee credit against the subsequent amount of fees owed, up to a total cumulative amount of \$3 million in credits and SFMTA will move forward with the funding contribution process provided for in Section 7.5 of this Agreement. If the total estimate is less than the sum of City Subsidies, the City and the Developer shall negotiate a reduced fee credit amount within 30 days of determining the final cost estimate, such that the resulting sum of City Subsidies is less than the total development cost estimate for the Transportation Improvements.

4.3.2. Transportation Fee Obligation Uses and Rate. The Transportation Obligation funds will be paid to SFMTA and are to be used for transportation improvements that support transit service to Visitacion Valley. As described more particularly in Exhibit J, the Transportation Obligation fee rate will be equivalent to the Transportation Impact Development Fee ("**TIDF**") rate for all product types covered by the TIDF. Residential development which is not covered by the TIDF will be subject to the fee rate specified in Exhibit E. With regard to the foregoing, any 100% affordable building onsite is not subject to the residential transportation fee rate. For product types subject to the TIDF, the fee rate at any given time will be the standard TIDF fee schedule in effect City-wide at that time. Notwithstanding Section 2.4, for residential development not covered by the TIDF, the rates shown in the fee schedule in Exhibit E will remain unchanged throughout the term of this Development Agreement, such that this portion of the Developer's Transportation Fee Obligation may not be increased regardless of the final terms that may be adopted by the City upon its approval of the Transportation Sustainability Program ordinance. This Transportation Fee Obligation is considered to be in lieu of any other transportation impact fee that the City may subsequently adopt, including, but not limited to, a fee derived from the Bi-County Transportation Study.

#### 4.4. Workforce.

4.4.1. First Source Hiring Program. Developer agrees to participate in the City's First Source Hiring Program, pursuant to Chapter 83 of the Administrative Code and as outlined in Section 6.8 of this Agreement for all construction jobs and for end use commercial jobs.

4.4.2. Prevailing Wage. Developer agrees to pay prevailing wages in connection with the infrastructure and any public improvement work as outlined in Section 6.9 of this Agreement.

4.5. Transportation-Related Improvements. Developer agrees: (1) not to impede the construction or operation of transportation-related improvements on adjacent parcels, including



but not limited to the Union Pacific Railroad Parcel and the Joint Powers Board Parcel; (2) to allow access through the Site for: (a) construction vehicles serving transportation-related improvement projects on adjacent parcels (unless the Site already contains public right of ways that will allow for such access) and (b) pedestrians accessing transportation facilities on adjacent parcels (unless the Site already contains public right of ways that will allow for such access); and (3) to lease, at market rate, any vacant land for staging as required for adjacent transportation improvements, so long as these actions would not impede or delay development of the Project Site as may be reasonably determined by Developer.

#### 4.6. Historic Office Building Rehabilitation.

Developer will be required to rehabilitate, to a level acceptable for use by a long-term occupant, the Historic Office Building located at 2201 Bayshore Boulevard (Assessor Parcel Number 5087/003) in conjunction with the development of Parcels 11 and 12, as described in the Phasing Plan. When rehabilitated, the Historic Office Building is expected to house Community Uses (which may include, but are not limited to, health clinics, classrooms, childcare, non-profit offices, and community meeting rooms) or a combination of Community Uses and any other uses allowable under applicable zoning and the SUD. At least 25 percent of the Historic Office Building's net leasable floor area must be restricted to Community Uses for a minimum of fifteen (15) years (the "**Community Use Restriction**"). The Parties agree to record a Notice of Special Restrictions to apply the Community Use Restriction to the Site in the form attached as Exhibit Q to this Agreement. Developer will also be required to secure and stabilize the historic building, as well as undertake minor exterior aesthetic improvements, in conjunction with the Project Improvements and Community Improvements for Phase 1, as described in the Phasing Plan, attached as Exhibit F.

This rehabilitation obligation and the ongoing operation of and maintenance of the Historic Office Building will be the Developer's responsibility until the Developer assigns it to another party. Developer, or its transferee, will be entitled to all revenue generated from the lease or sale of this property.

4.7. Impact Fee. The Project will be subject to the Visitacion Valley Community Facilities and Infrastructure Fee based on the formula in the corresponding fee ordinance. An amount equal to 33 percent of the Project's Visitacion Valley Fee obligation will be waived in consideration of in-kind community benefits provided by the Project's obligation to build new parks and rehabilitate the Historic Office Building for public and community uses. All eligible development will pay 67% of the Visitacion Valley fee. Per Section 420.1(d) of the Planning Code, 28% of Visitacion Valley Community Facilities and Infrastructure Fee revenue collected by the Planning Department and then transferred to the applicable implementing City Agency (e.g., SFMTA and/or DPW), according to the standard practices of IPIC (the Interagency Plan Coordination Committee) and will be used to fund local transportation improvements. This proportion of the Schlage Lock Project's total Visitacion Valley Community Facilities and Infrastructure Fee obligation (calculated before any reductions in consideration for in-kind benefits) will be used to fund transportation improvements identified as priorities in the Bi-County Study (e.g., the Geneva Avenue bus rapid transit system and pedestrian safety projects). To maximize flexibility, as the funds are received, SFMTA, and SFCTA will jointly determine which Bi-County priorities will be funded.

4.8. Transportation Demand Management Plan. As required through the Project's Mitigation Monitoring and Reporting Program, Developer has prepared a Transportation Demand Management Plan ("TDM Plan") (Exhibit J). Developer and its successors will implement all programs described in the TDM Plan and be subject to any monitoring, enforcement, and penalty programs run by SFMTA or any other City agency, including monitoring, enforcement, and penalty programs adopted up to 5 years after the Effective Date.

4.9. Grocery and Retail. The Project will include a General Grocery, which will be completed in conjunction with Phase 1, as described in the Phasing Plan. The General Grocery store must total at least 15,000 gross square feet. Phase 1 must include a total of 20,000 gross square feet of retail, including the General Grocery. As described in the Phasing Plan, Exhibit F, no Phase other than Phase 1 may commence until (a) all of Phase 1's residential units have been granted Temporary Certificate of Occupancy ("TCO") and (b) the grocery store planned for Parcel 1 has either (i) begun operation or (ii) completed all core and shell and submitted applications for building permits for tenant improvements. If all parcels in Phase 1 have received TCO, the Project may seek to amend this retail obligation, subject to Planning Commission approval and provided, however, that such amendments will only be considered if the core and shell for the General Grocery portion have been completed. To receive Planning Commission approval, the Developer must provide documentation of its reasonable efforts to obtain a grocery store tenant. The Design for Development indicates the location, parking, and other design features of the Project's retail space, including the General Grocery.

## **5. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS**

5.1. Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a 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.

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

5.3. No Conflict With Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with

Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

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

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

5.6. Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126 1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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

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

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

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

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

## **6. OBLIGATIONS OF DEVELOPER**

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

6.2. Compliance with Conditions and CEQA Mitigation Measures. Developer shall comply with all applicable conditions of the Basic Approvals and any Implementing Approvals, and shall comply with all required Mitigation Measures as included in Exhibit I to this Agreement and as modified by [CEQA letter currently being composed by City Attorney and SFMTA staff].

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

6.2.2. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes to the Basic

Approvals as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the granting of such permit or otherwise to address significant environmental impacts as defined by CEQA created by the approval of such permit; provided, however, any such conditions must be in accordance with applicable law.

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

6.4. Community Participation in Allocation of Impact Fees. The Planning Department and the SFMTA shall conduct periodic public meetings in Visitacion Valley to inform and consult with the public in the prioritization the community improvement projects to be funded by the Visitacion Valley Community Facilities and Infrastructure Fee and the Transportation Fee Obligation. A minimum of two such meetings shall occur each year during the two years following the Effective Date, and a minimum of one such meeting shall occur annually thereafter. At each of these meetings, the Developer shall present a progress report on the Project, including but not limited to the status of parks and Community Improvements, number of units built, BMR units, and status of the Historic Office building. Such progress report may use information from, or be the same as, the annual review as required by Section 9.1.

6.5. Sustainability Evaluation. To achieve an even greater level of sustainability through reduction of energy and water consumption, and enhancement of community-scale energy resources, the Project shall examine the potential for implementation of site-wide sustainable infrastructure systems. Prior to the commencement of each Development Phase, Developer shall submit to the Planning Department the results of a site-wide Sustainability Evaluation that examines which strategies, if any, achieve greater levels of sustainability beyond City requirements; are most cost-effective relative to the benefits they provide; and are being implemented with a development phase. This examination shall include, at a minimum: (i) Inclusion of supporting infrastructure (including roof load calculations, roof space and orientation design, penetrations and waterproofing for panel ‘stand-off’ supports, mechanical room space, and electrical wiring and plumbing) for future photovoltaic systems or solar thermal water heating systems; (ii) Installation of active solar thermal energy systems on new construction and retrofitting existing structures for space heating and hot water supply systems; (iii) Incorporation of district-level renewable energy generation technologies. Methods may include:

- Wind turbine systems and associated equipment.
- Photovoltaic roof panels.
- Recovery of waste energy from exhaust air, recycled (gray) water, and other systems.

(iv) Use of rainwater, and recycled (gray) water for landscape irrigation and other uses, as permitted by Health and Building Codes, rather than a potable water source.

6.6. Cooperation By Developer.

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

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

6.6.3. The analysis required by this section is for research purposes only, and the implementation of any strategy, recommendation, or mitigation identified by such analysis shall be solely at Developer's discretion.

6.7. Nondiscrimination.

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

6.8. First Source Hiring Program.

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

(a) Set appropriate hiring and retention goals for entry level positions. All covered Employers shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the Employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the

requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the Employer to the provisions of Section 83.10 of the Administrative Code;

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

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

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

(e) Establish guidelines for Employer good faith efforts to comply with the first source hiring requirements of Chapter 83. The FSHA will work with City departments to develop Employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the Employer's agreement. In the event that the FSHA finds that the Employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of Chapter 83, that Employer shall be subject to the sanctions set forth in Section 83.10 of Chapter 83;

(f) Set the term of the agreement;

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

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

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

6.8.2. Miscellaneous. Developer or its contractor, as applicable, shall make the final determination of whether an economically disadvantaged individual referred by the System is "**qualified**" for the position. Upon application by an Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with Chapter 83 would cause economic hardship. In the event Developer breaches the requirements of this Section 6.8, Developer shall be liable to the City for liquidated damages as set forth in Chapter 83. As set forth in the First Source Hiring Agreement, any contract or subcontract entered into by Developer shall require the contractor or subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section 6.8.

6.9. Prevailing Wages. During the Term, Developer agrees that all work performed pursuant to this Agreement will be done in a manner consistent with City and State Prevailing Wage Law, to the extent applicable, and specifically that any person performing labor in the construction of Public Improvements, Stormwater Management Improvements or Community Improvements on the Project Site shall be paid not less than the highest prevailing rate of wages under Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, as required by governing law. Developer shall include in any contract for such construction a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Developer shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of Public Improvements or Community Improvements.

6.10. Payment of Fees and Costs.

6.10.1. Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 2.4 and Exhibit E of this Agreement.

6.10.2. Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Basic Approvals or the Implementing Approvals under the Municipal Code. Prior to engaging the services of any consultant or authorizing the expenditure of any funds for such consultant to assist the City, the City shall consult with Developer in an effort to mutually agree to terms regarding (i) the scope of work to be



performed, (ii) the projected costs associated with the work, and (iii) the particular consultant that would be engaged to perform the work.

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

6.10.4. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 12.4.

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

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

6.13. Indemnification of City. Developer shall Indemnify the City and its officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims (“**Losses**”) arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless

of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of City. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City's cost of investigating any claims against the City. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

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

6.15. Notice of Special Restrictions for Parks. Upon approval of the final map consistent with this Development Agreement, Developer shall record Notice of Special Restrictions ("**NSRs**") on the Visitacion Park and Leland Greenway Park parcels, which are designed for potential acquisition by the City. Developer shall promptly provide a copy of the recorded NSRs to the Planning Department and to any other monitoring agency.

6.16. Fire Suppression Obligations. The Developer shall satisfy its fire suppression obligation to the City by providing low pressure water system elements meeting Uniform Fire Code requirements, as described in the Infrastructure Plan, Exhibit L to the Development Agreement, plus the seismically reliable or high pressure fire suppression system as described in this Section. SFPUC and the SFFD shall make the selection of the appropriate option for the Project of improvements to the seismically reliable high pressure Auxiliary Water Supply System (AWSS) and/or the selection of a portable water supply system (PWSS) to meet post-earthquake fire suppression standards that have been developed by the SFPUC and SFFD. However, Developer's funding obligation under this Section shall be limited to the actual cost of a PWSS that is appropriately designed for the Project-specific requirements, as negotiated by the City using best efforts with a reputable vendor, or \$1,500,000 whichever is less. Developer shall consult with SFPUC and the SFFD for design specifications and, upon the selection of a vendor

for the PWSS, Funds shall be delivered to the City within sixty (60) days after the certificates of occupancy have been issued by the Department of Building Inspection for all the dwelling units in Phase 1 of the Project. The Parties agree that Developer's provision of funds for the designs and the PWSS system shall be its sole obligation for seismically reliable fire suppression systems and shall have no obligation for payment to construct or fund improvements to the City's Auxiliary Water Supply System or any other high pressure or seismically reliable water system infrastructure or program related to fire suppression. Should the SFPUC and SFFD select an alternative form of AWSS for the Project then Developer's obligation shall be the maximum of \$1,500,000 and funds shall be delivered to the City within sixty (60) days after the certificates of occupancy have been issued by the Department of Building Inspection for all the dwelling units in Phase 1 of the Project. The obligation of developer shall be a maximum of \$1,500,000 in 2014 dollars with no escalation.

## 7. OBLIGATIONS OF CITY

7.1. No Action to Impede Basic Approvals. Subject to City's express rights under this Agreement, City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Basic Approvals. An action taken or condition imposed shall be deemed to be "**in conflict with**" this Agreement or the Basic Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 2.3.1 of this Agreement.

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

7.3. Criteria for Approving Implementing Approvals. The City may approve an application for an Implementing Approval subject to any conditions necessary to bring the Implementing Approval into compliance with this Agreement, the Basic Approvals, any Implementing Approvals that have been previously granted, the Existing Standards, or Future Changes to Existing Standards (except to the extent such Future Changes to Existing Standards are in conflict with this Agreement or the terms and conditions of the Basic Approvals). If the City denies any application for an Implementing Approval that implements the Project as contemplated by the Basic Approvals (as opposed to requests for Implementing Approvals that effect a Material Change to the Basic Approvals), the City must specify in writing the reasons for such denial, which reasons may include how the application for the Implementing Approval is inconsistent with this Agreement and/or the Basic Approvals (if such inconsistencies are determined to exist), and the City shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with this Agreement (including the consistency with the Uniform Codes as provided in Section 2.3.4 or the Design for Development), the Basic Approvals, the Implementing Approvals that have been previously granted, and the Existing Standards or Future Changes to Existing Standards and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, the Basic Approvals, any Implementing

Approvals that have been granted, the Existing Standards, Future Changes to Existing Standards (if any) and Applicable law.

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

7.5. Commitment of Transportation Funds.

7.5.1. The San Francisco County Transportation Authority (“**SFCTA**”) will program \$2 million of Proposition K funds to the Project through its 2014 Strategic Plan and 5-Year Prioritization Program process, anticipated to conclude by June 30, 2014. This \$2 million in Proposition K funds will be programmed for transportation improvements located within and directly adjacent to the Project Site but intended to serve the larger community through improved pedestrian safety and pedestrian access to the Bayshore Caltrain Station. The Proposition K funds will subsidize the design and/or construction of the Project’s Phase 1 pedestrian network, which will provide complete pedestrian connectivity between Bayshore Boulevard and the Bayshore Caltrain Station through a combination of permanent sidewalks and temporary pathways, as described in the Open Space and Streetscape Master Plan (“**Funding Contingency Work**”). Eligible improvements include sidewalks, temporary pedestrian pathways, signage, and other traffic calming measures that facilitate pedestrian safety. All portions of this pedestrian network must be consistent with the Open Space and Streetscape Masterplan.

The San Francisco Municipal Transportation Agency (“**SFMTA**”) has agreed to serve as the fiscal sponsor for the Project’s Proposition K allocation request(s). SFMTA will be the recipient of the Proposition K funds and will transfer the funds to the Developer on a reimbursement basis. For the Project to obtain all or any portion of this \$2 million, SFMTA, on behalf of the Project, must request the funds by completing SFCTA’s standard Proposition K request form and proceed through the SFCTA Board’s Proposition K allocation approval process; provided that the request is complete and accurate, and consistent with Proposition K policies, it will not be denied. Proposition K funds are provided on a reimbursement basis, meaning that an allocation request must be approved prior to expenditure and that SFMTA, on behalf of the project, will be reimbursed for expenditures upon the submission of eligible expenses to SFCTA. SFMTA will subsequently reimburse eligible Developer costs according to project milestone completion and receipt of support documentation for all costs incurred. Once the SFMTA certifies the applicable milestone has been completed and is acceptable and that all support documents are sufficient, SFMTA will reimburse eligible costs to the Developer within thirty (30) days. Provided that the request is complete and accurate, it will not be denied. Milestones for reimbursement are as follows:

(a) At the time when the City approves the applicable improvement or improvements’ Design Review Application, ensuring that improvement is designed to conform with Open Space and Streetscape Masterplan, SFMTA will reimburse all design-related eligible expenses.

(b) At the time when construction of applicable improvement(s) is substantially complete, SFMTA will reimburse all eligible construction expenses to date.

(c) At the time when the City deems that all public benefits and Community Improvements within the applicable phase are complete, such that the first residential unit within the phase may receive First Certificate of Occupancy, SFMTA will provide final reimbursement for any expenses occurring after substantial completion milestone.

(d) Developer will be required to provide quarterly progress reports on any Proposition K-funded design and/or development work to SFMTA within 30 days of the end of each quarter. SFMTA will subsequently submit these reports to SFCTA.

(e) Additionally, documentation of compliance with City payment procedures and policies must be provided for all reimbursable expenses. (See Controller's office website for details: <http://www.sfcontroller.org/>)

SFMTA, on behalf of the Developer, may request the Proposition K funds for a particular phase of design and/or construction work, either as a single application for \$2 million or in multiple increments adding up to \$2 million, provided that no allocation request may exceed the anticipated eligible costs of the improvement(s) for which reimbursement is being sought at that time. If a particular improvement or set of improvements requires less funding than initially anticipated, any remaining funds will be de-obligated and returned to the SFCTA. Any such return of funds will not compromise the Developer's eligibility to utilize a cumulative total of \$2 million in Proposition K funds.

7.5.2. SFMTA agrees to dedicate additional funds to be spent on transportation improvements located within and directly adjacent to the Project Site but intended to serve the larger community through improved pedestrian safety and pedestrian access to the Bayshore Caltrain Station and along Bayshore Boulevard in the vicinity of the Project. These funds will be used to reimburse Developer's expenditures for eligible transportation improvements that have not been funded by another City source (e.g. Visitacion Valley Community Facilities and Infrastructure Fee, Proposition K dollars, or other transportation impact fees). Upon the earlier of (a) MTA designating a specific source for these funds or (b) 2 years after the Effective Date, the Project may request up to \$1.5 million to reimburse Developer for the cost of eligible transportation improvements that have not been funded by another City source. Developer must request these funds at least 120 days prior to the date when they wish to be reimbursed, and SFMTA must evaluate the request within 60 days of receiving it. This funding to the Project is contingent upon Developer completing the Funding Contingency Work as defined in Section 7.5.1 above. SFMTA will transfer funds to Developer on a reimbursement basis. Reimbursement is contingent upon both receipt of sufficient support documentation and completion of the following key Project milestones:

(a) At the time when the City approves the applicable improvement or improvements' Design Review Application, ensuring that improvement is designed to conform with Open Space and Streetscape Masterplan, SFMTA will reimburse all design-related eligible expenses.

(b) At the time when construction of applicable improvement(s) is substantially complete, SFMTA will reimburse all eligible construction expenses to date

(c) At the time when the City deems that all public benefits and Community Improvements within the applicable phase are complete, such that the first residential unit within the phase may receive First Certificate of Occupancy, SFMTA will provide final reimbursement for any expenses occurring after substantial completion milestone.

(d) Additionally, documentation of compliance with City payment procedures and policies must be provided for all reimbursable expenses. See Controller's office website for details: <http://www.sfcontroller.org/>

Developer may request these funds in a single application or in multiple increments, up to a cumulative total of \$1.5 million, provided that no allocation request may exceed the anticipated eligible costs of the improvement(s) for which reimbursement is being sought at that time. If a particular improvement or set of improvements requires less funding than initially anticipated, any remaining funds will be de-obligated and returned to the SFMTA. Any such return of funds will not compromise the Developer's eligibility to utilize a cumulative total of \$1.5 million.

#### 7.6. Park Subsidy/Acquisition.

The terms and procedures for the acquisition of parks of parks pursuant to this Agreement are described in Exhibit M attached hereto.

[Language to be added following the completion of negotiations between the Developer and the Recreation and Parks Department.]

7.7. On-Street Parking Management. The City will manage the Project Site's on-street parking to maximize access to the Project and support the City's broader transportation goals. To preserve flexibility as parking demands and traffic conditions change over time, the City will periodically evaluate the efficacy of the on-street parking management strategies being employed at the Project Site and make appropriate adjustments based on SFMTA's Policies for On-Street Parking Management or subsequently adopted guidelines. These evaluation and adjustment processes will utilize mode split and other transportation data collected as required by the Transportation Demand Management Plan and solicit input from occupants and property owners at the Project Site, as well as stakeholders in the Visitacion Valley community. In particular, the City agrees to manage the Project Site's on-street parking in such a way that does not prioritize daytime commuter parking (e.g. for Caltrain riders) over the access needs of the Project Site's occupants and visitors.

## 8. MUTUAL OBLIGATIONS

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

8.2. Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

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

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

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

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

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

## 9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1. Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code as of the Effective Date (“**Section 56.17**”), attached hereto as Exhibit O, at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the “**Annual Review Date**”), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director’s right to do so later in the calendar year; provided, however, that such review shall be deferred to the following January if not commenced on or before May 31st. 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.

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

9.2.1. Required Information from Developer. 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 containing evidence to show compliance with this Agreement, including, but not limited to, compliance with the requirements regarding the following: the Community Improvements, Public Improvements and Stormwater Management Improvements constructed or under construction by Developer as required by the Phasing Plan, and the manner in which the BMR Requirements have been met. The burden of proof, by substantial evidence, of compliance is upon Developer.

9.2.2. City Report. Within forty-five (45) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer’s compliance with this Agreement. All such available evidence including final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement. If the Planning Director finds Developer in compliance, then the Planning Director shall proceed in the manner provided in Section 56.17. If the Planning Director finds Developer is not in compliance with this Agreement, the Planning Director shall issue a Certificate of Non-Compliance as procedures set forth in Section 56.17. The City’s failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date within a given year, so long as the annual review is commenced on or before May 31st, as contemplated in Section 9.1. All costs incurred by the City under this Section shall be included in the City Costs.



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

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

## **10. AMENDMENT; TERMINATION; EXTENSION OF TERM**

10.1. Amendment or Termination. Except as provided in Section 2.6 (Changes in State and Federal Rules and Regulations) and Section 12.4 (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 Section 56.18.

10.1.1. Amendment Exemptions. No amendment of a Basic Approval or Implementing Approval, or the approval of an Implementing Approval, shall require an amendment to this Agreement. Upon approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Implementing Approval). Notwithstanding the foregoing, if there is any conflict between the terms of this Agreement and an Implementing Approval, or between this Agreement and any amendment to a Basic Approval or Implementing Approval which is not consistent with the terms of this Agreement, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Implementing Approval or the proposed amendment to a Basic Approval or Implementing Approval. If the Parties fail to amend this Agreement as set forth above, then the terms of this Agreement shall prevail over any Implementing Approval or any amendment to a Basic Approval or Implementing Approval that conflicts with this Agreement.

10.2. Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Basic Approvals, except as to each Basic Approval for a building project that has been commenced in reliance thereon.

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

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

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

10.3.3. The foregoing Section 10.3.2 notwithstanding, Developer may not seek to delay the Completion of an Community Improvement or other public benefit required under a Development Phase Approval (including any required implementation trigger contained in the Phasing Plan or in an Implementing Approval) as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing. Furthermore, Developer may not rely on Excusable Delay to delay the Completion of a Community Improvement or other public benefit while commensurate work (to that which is sought to be delayed) is being performed on the market-rate development in the Project Site.

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

### **11.1. Permitted Transfer of this Agreement.**

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

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

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

(c) Following the Completion of infrastructure as needed to create developable lots, Developer shall have the right to convey developable lots or parcels within the Project Site for vertical development not requiring the construction of Community Improvements and Transportation Mitigation Measures but requiring the construction of on-site Public Improvements or Stormwater Management Improvements required by the Planning Code or other City code or regulation (including adjoining streetscape improvements required by a street improvement permit), and Transfer all rights, interests and obligations under this Agreement with respect to the conveyed lots or parcels, without the City's consent (subject to the requirements of Section 4.2 with respect to the Completion of BMR Units or payment of an in lieu fee); and

(d) Developer shall have the right to convey a portion of the Project Site, together with a Transfer of its rights, interests and obligations under this Agreement with respect to the conveyed real property, to Affiliates without the City's consent (but subject to the cross-default provisions between Developer and Affiliates as set forth in Section 12.2 below); and

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

Any Transfer of rights, interests and obligations under this Agreement shall be by an Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit P, and notwithstanding the fact that the City cannot object to Transfers described in this Section 11.1.1 above, the City shall have the right to object to an Assignment and Assumption Agreement if and to the extent such agreement does not meet the requirements of Section 11.3.2. No Transfer under this Section shall terminate or modify the rights or obligations of the Parties under this Agreement including but not limited to the BMR Requirements.

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

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

11.3. Notice and Approval of Transfers.

11.3.1. With regard to any proposed Transfer under this Article 11, Developer shall provide not less than thirty (30) days written notice to City before any proposed Transfer of its interests, rights and obligations under this Agreement. Developer shall provide, with such notice, a copy of an assignment and assumption agreement, in substantially the form attached hereto as Exhibit P, that Developer proposes to enter into, with a detailed description of what obligations are to be assigned to the Transferee and what obligations will be retained by Developer, and a description of the real property proposed for conveyance to the Transferee (an "**Assignment and Assumption Agreement**"). The City shall execute and return the Assignment and Assumption Agreement, or provide any written objections, within thirty (30) days following receipt of the Assignment and Assumption Agreement from Developer.

11.3.2. Each Assignment and Assumption Agreement shall be in recordable form, substantially the form attached hereto as Exhibit P, and include: (i) an agreement and covenant by the Transferee not to challenge the enforceability of any of the provisions or requirements of this Agreement, including but not limited to the Costa-Hawkins Act provisions and waivers; (ii) a description of the obligations under this Agreement (including but not limited to obligations to construct Community Improvements and Mitigation Measures) that will be assumed by the assignee and from which assignor will be released; (iii) confirmation of all of the Indemnifications and releases set forth in this Agreement; (iv) a covenant not to sue the City, and an Indemnification to the City, for any and all disputes between the assignee and assignor; (v) a covenant not to sue the City, and an Indemnification to the City, for any failure to

complete all or any part of the Project by any party, and for any harm resulting from the City's refusal to issue further permits or approvals to a defaulting party under the terms of this Agreement; (vi) a transfer of any existing bonds or security required under this Agreement, or the Assignee will provide new bonds or security to replace the bonds or security that had been provided by Assignor, and (vii) such other matters as are deemed appropriate by the assignee and assignor and are approved by the City. Each Assignment and Assumption Agreement shall become effective when it is duly executed by the Parties, the Planning Director has executed the consent, and it is recorded in the Official Records.

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

11.4. City Review of Proposed Transfers. The City shall use good faith efforts to promptly review and respond to all approval requests under this Article 11. The City shall explain its reasons for any denial, and the parties agree to meet and confer in good faith to resolve any differences or correct any problems in the proposed documentation or transaction. If the City grants its consent, the consent shall include a fully executed, properly acknowledged release of assignor for the prospective obligations that have been assigned, in recordable form, and shall be recorded together with the approved Assignment and Assumption Agreement. Notwithstanding anything to the contrary set forth in this Agreement, the City shall not be required to consider any request for consent to any Transfer while Developer is in uncured breach of any of its obligations under this Agreement. Any sale or conveyance of all or part of the Project Site during the Term without an Assignment and Assumption Agreement as required by this Article 11 assigning the applicable portions of this Agreement, if any, (except for conveyances to Mortgagees and conveyances of completed lots with completed vertical development for which there are no continuing rights or obligations under this Agreement, and for which the Parties have therefore released the encumbrance of this Agreement) shall be an Event of Default. Any Transfer in violation of this Article 11 shall be an Event of Default. If Developer fails to cure such Event of Default by voiding or reversing the unpermitted Transfer within ninety (90) days following the City's delivery of the Notice of Default, the City shall have the rights afforded to it under Article 12.

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

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

11.7. Rights of Developer. The provisions in this Article 11 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any mortgage, deed of trust, or other device securing financing with respect to the Project Site or Project, (iii) granting a leasehold interest in portions of the Project Site in which persons or entities so granted will reside or will operate, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, provided that Developer retains control of such joint venture or partnership and provided none of the foregoing will affect or limit Developer’s obligations or liabilities under this Agreement, (v) upon completion of a building, selling a fee interest in a condominium unit, or (vi) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage; provided, however, with respect to items (i) through (iii) above, Developer shall not grant any such easements or licenses, allow encumbrances, or grant leasehold interests over real property intended for

conveyance to the City in accordance with the Schlage Lock Development Plan Documents without the City's prior written consent, which shall not be unreasonably withheld unless such interests or encumbrances can be and in fact are terminated by Developer before conveyance to the City. None of the terms, covenants, conditions, or restrictions of this Agreement or the Basic Approvals or Implementing Approvals shall be deemed waived by City by reason of the rights given to Developer pursuant to this Section 11.7.

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

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

11.9.1. Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), a mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action ("**Mortgagee**"), shall not be obligated under this Agreement to construct or complete improvements required by the Basic Approvals, Implementing Approvals or this Agreement or to guarantee their construction or completion solely because the Mortgagee holds a mortgage or other interest in the Project Site or this Agreement. The foregoing provisions shall not be applicable to any other party who, after such foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to the Project Site or a portion thereof from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of Developer under this Agreement.

11.9.2. Subject to the provisions of the first sentence of Section 11.9.1, any person, including a Mortgagee, who acquires title to all or any portion of the Project Site by

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

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

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

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



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

12.1. Enforcement. The only Parties to this Agreement are the City and Developer (including any Transferee). This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever, except for a Mortgagee as set forth in Section 11.9 and any other provision that is for the express benefit of Mortgagees.

12.2. 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 and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a “**Notice of Default**”); provided, however, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30 day period and diligently prosecuted to completion thereafter. An Event of Default by Developer or an Affiliate of Developer shall be, at the City’s option, an Event of Default by Developer and its Affiliates with all available remedies under Section 12.4; provided, however, (a) no Event of Default by Developer or an Affiliate of Developer in its capacity as a developer of vertical improvements (defined as improvements that are not Community Improvements, Public Improvements, Stormwater Management Improvements, or any other horizontal development) (each, a “**Vertical Obligation**”, and the Affiliate, an “**Affiliated Vertical Developer**”) shall be an Event of Default by other Affiliated Vertical Developers, (b) no Event of Default by Developer or an Affiliate of Developer with respect to the obligations of this Agreement regarding the construction, maintenance, or operation of Community Improvements, Public Improvements, Transportation Mitigation Measures, Stormwater Management Improvements, or any other horizontal development (each, a “**Horizontal Obligation**”) shall be deemed to be an Event of Default by an Affiliated Vertical Developer, and (c) notwithstanding anything to the contrary in clause (a) above, an Event of Default by an Affiliated Vertical Developer with respect to the BMR Unit requirements shall, at the City’s option, be deemed an Event of Default by Developer and all of its Affiliates for all purposes under this Agreement (including all Vertical Obligations or Horizontal Obligations). Notwithstanding the inability to cross-default certain obligations as set forth in (a) through (c) above, Developer and each Transferee assume the risk that another Party’s failure to Complete a Mitigation Measure, Community Improvement or Public Improvement may delay or interfere with its development rights as set forth in Section 11.6.

12.3. Notice of Default. Prior to the initiation of any action for relief specified in Section 12.4 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 12.4 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 12.4. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

#### 12.4. Remedies.

12.4.1. Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section 12.4.2 below). The City's specific performance remedy shall include the right to require that Developer Complete any Public Improvement that Developer has commenced (through exercise of rights under payment and performance bonds or otherwise), and to require dedication of the Public Improvement to the City upon Completion together with the conveyance of real property as contemplated by this Agreement. Developer's right to specific performance shall include, but not be limited to, review and approval, consistent with the terms of this Agreement, of Development Phase Applications, Design Review Approvals, and Implementing Approvals, as described in this Agreement. In addition, in the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

12.4.2. Limited Damages. The Parties have determined that, except as set forth in this Section 12.4.2, (i) monetary damages are generally inappropriate and in no event shall the City be liable for any damages whatsoever for any breach of this Agreement, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a breach hereunder and (iii) equitable remedies and remedies at law not including damages but including termination are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, (2) the City shall have the right to recover any and all damages relating to Developer's failure to construct Public Improvements in accordance with the City approved plans and specifications and in accordance with all applicable laws (but only to the extent that the City first collects against any security, including but not limited to bonds, for such Public Improvements), and (3) either Party

shall have the right to recover attorneys' fees and costs as set forth in Section 12.7, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "**actual damages**" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

12.5. Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project and the Project Site of the Existing Standards or Future Changes to the Existing Standards. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section 12. that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project or the Project Site of Existing Standards or Future Changes to the Existing Standards, the dispute shall initially be presented by Planning Department staff to the Planning Director, by DPW staff to the Director of DPW, or to DBI staff to the Director of DBI, whichever is appropriate, for resolution. If the Planning Director, Director of DPW, or Director of DBI, as applicable, decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

12.6. Dispute Resolution Related to Changes in State and Federal Rules and Regulations. The Parties agree to follow the dispute resolution procedure in this Section 12.6.2 for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section 2.6.2.

12.6.1. Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section 12.6.2.

12.6.2. 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.

12.7. 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 City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

12.8. 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.

12.9. 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 12.4.1, 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), including any Future Changes to Existing Standards, subject to the terms of Section 2.6

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

### **13. MISCELLANEOUS PROVISIONS**

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

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

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

13.4. 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 to this Agreement or any of the Basic Approvals or Implementing Approvals shall be deemed to refer to the Agreement or the Basic Approvals or Implementing Approvals as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

#### **13.5. Project Is a Private Undertaking; No Joint Venture or Partnership.**

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

13.5.2. 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.

13.6. Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute and Section 56.16 of the Administrative Code, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

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

13.8. 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.

13.9. 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.

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

**To City:**

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

with a copy to:

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

**To Developer:**

Jonathan Scharfman  
General Manager/Development Director  
Universal Paragon Corporation  
150 Executive Park Blvd., Suite 1180  
San Francisco, CA 94134

with a copy to:

David P. Cincotta, Esq.  
Jeffer Mangels Butler & Mitchell LLP  
Two Embarcadero Center, Fifth Floor  
San Francisco, California, 94111

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

13.12. 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 Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

13.13. MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

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

13.15. Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 et seq.), this Agreement and any and all records, information,

and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, . When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

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

[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

Approved as to form:  
Dennis J. Herrera, City Attorney

By: \_\_\_\_\_  
John Rahaim  
Director of Planning

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

Approved on \_\_\_\_\_  
Board of Supervisors Ordinance No. \_\_\_\_\_

**Approved:**

By: \_\_\_\_\_  
City Administrator

By: \_\_\_\_\_  
Director of Public Works

By: \_\_\_\_\_  
Joanne Hayes-White, SFFD Fire Chief

By: \_\_\_\_\_  
Olson Lee, Director Mayor's Office of  
Housing and Community Development

**DEVELOPER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT FOR NEGOTIATION PURPOSES ONLY – SUBJECT TO CHANGE

**CONSENT TO DEVELOPMENT AGREEMENT**

**San Francisco Municipal Transportation Agency**

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

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the Infrastructure Plan, the Transportation Plan, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program contained or referenced therein, consented to the Development Agreement as it relates to matters under SFMTA jurisdiction, including the SFMTA Infrastructure and the transportation-related Mitigation Measures.

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

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

By: \_\_\_\_\_  
Executive Director

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

By: \_\_\_\_\_  
Deputy City Attorney

San Francisco Municipal Transportation Agency Resolution No. \_\_\_\_\_ Approved \_\_\_\_\_

[SFMTA Consent]

**CONSENT TO DEVELOPMENT AGREEMENT**  
**San Francisco Public Utilities Commission**

The Public Utilities Commission of the City and County of San Francisco (the “**SFPUC**”) has reviewed the Development Agreement between the City and VISITACION DEVELOPMENT, LLC, a California limited liability company (the “**Development Agreement**”), relating to the proposed Schlage Lock development project to which this Consent (this “**SFPUC Consent**”) is attached and incorporated. Except as otherwise defined in this SFPUC Consent, initially capitalized terms have the meanings given in the Development Agreement.

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

1. The Development Agreement as it relates to matters under SFPUC jurisdiction, including, but not limited to, the Stormwater Management Improvements and the SFPUC-related Mitigation Measures;
2. Subject to Developer satisfying the SFPUC’s requirements for construction, operation, and maintenance that are consistent with the Existing Standards and Future Changes to Existing Standards permitted by Sections 2.2 and 2.3 of the Development Agreement, the Uniform Codes, the Agency Design Standards, and applicable State and federal law, and the plans and specifications approved by the SFPUC under the terms of the Development Agreement, and meeting the SFPUC-related Mitigation Measures, the SFPUC’s accepting and then, subject to appropriation, operating and maintaining SFPUC-related infrastructure; and
3. Delegating to the SFPUC General Manager or his or her designee any future approvals of the SFPUC under the Development Agreement, including approvals of Development Phase Applications, subject to applicable law including the City’s Charter.

San Francisco Public Utility Commission Resolution No. \_\_\_\_\_ ’ Approved \_\_\_\_\_

[SFPUC Consent]

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

CITY AND COUNTY OF SAN FRANCISCO,

a municipal corporation, acting by and through the SAN FRANCISCO PUBLIC UTILITY COMMISSION

By: \_\_\_\_\_

\_\_\_\_\_  
HARLAN L. KELLY, JR.  
General Manager

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

San Francisco Public Utility Commission Resolution No. \_\_\_\_\_' Approved \_\_\_\_\_

[SFPUC Consent]

## CONSENT TO DEVELOPMENT AGREEMENT

### San Francisco Recreation and Park Department

The Recreation and Park Department of the City and County of San Francisco (“RPD”) has reviewed the Development Agreement between the City and VISITACION DEVELOPMENT, LLC, a California limited liability company (the “**Development Agreement**”), relating to the proposed Schlage Lock development project to which this Consent to Development Agreement (this “**RPD Consent**”) is attached and incorporated. Except as otherwise defined in this RPD Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this RPD Consent, the undersigned confirms that the Recreation and Park Commission, after considering the Development Agreement, including the Park Design and Acquisition Terms attached as Exhibit M to the Development Agreement at a duly noticed public hearing on June 19, 2014, adopted Resolution Number 1406-012, authorizing the General Manager to consent to:

1. The Development Agreement as it relates to matters under RPD jurisdiction;
2. Subject to the appropriation of any necessary funds and Developer satisfying all of the Developer’s obligations set forth in Exhibit M, Park Design and Acquisition Terms, and pursuant to a Purchase and Sale Agreement and/or any required Maintenance Agreement(s) between the Developer and RPD, RPD acquisition of one or both parks; and,

San Francisco Recreation and Parks Commission Resolution No. \_\_\_\_\_, Approved \_\_\_\_\_

By executing this RPD Consent, the RPD does not intend to in any way limit, waive or delegate any authority of the RPD as set forth in Section 4.113 of the City's Charter or any other provision of the San Francisco Charter.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through  
the SAN FRANCISCO RECREATION AND PARK  
DEPARTMENT

By: \_\_\_\_\_  
Philip A. Ginsburg  
General Manager

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

By: \_\_\_\_\_  
Julia M. C. Friedlander  
Deputy City Attorney

San Francisco Recreation and Parks Commission Resolution No. \_\_\_\_\_, Approved \_\_\_\_\_