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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 STRADA BRADY LLC

FOR PROPERTY AT MARKET AND COLTON STREETS

Block 3505: Lots 001, 007, 008, 027, 028, 029, 031, 031A, 032, 032A, 033, 033A, and 035

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND STRADA BRADY LLC

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this ____ day of _____, 2017, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and STRADA BRADY LLC, a California limited liability company ("**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the ground lessee of the approximately 2.2 acre (approximately 97,617 square foot) area generally between Market, 12th, Stevenson, Chase Court, and Brady Streets, composed of 3 buildings and 4 surface parking lots on 13 parcels, containing approximately 36,000 square feet of existing residential uses in the Civic Center Hotel, approximately 13,000 square feet of existing retail uses, the approximately 24,100 square foot Local 38 Plumbers Union hall, and the surface parking lots, all located on the real property more particularly described on Exhibit A (the "**Project Site**"). The Project Site is owned in fee by U.A. Local 38 Pension Trust Fund.

B. The Developer proposes a mixed use development that will include on-site affordable units and that recognizes the transit-rich location for residential, retail, open space, parking, and related uses. Specifically, the Project includes up to approximately 484 residential units consisting of a mix of market rate and on-site BMR units, a stand-alone building with approximately 100 but not less than 95 Affordable Supportive Housing Units, a 32,100 square foot replacement union facility use, approximately 13,000 square feet of ground-floor retail/restaurant use, up to 316 parking spaces in a sub-grade garage, and approximately 33,500 square feet of open space consisting of approximately 23,400 square feet of privately-owned, publicly accessible, open space and approximately 10,100 square feet of common open space for residential uses, all as more particularly described on Exhibit B (the "**Project**").

C. The Project is anticipated to generate an annual average of approximately 1,200 construction jobs during construction and, upon completion, approximately 10 net new permanent on-site jobs, and an approximately $3,000,000 annual increase in general fund revenues to the City.

D. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are

entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

E. In addition to the significant housing, jobs, and economic benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with this Agreement additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (1) an increase in affordable housing that exceeds amounts otherwise required and will equal approximately twenty-six to twenty-eight percent (26-28%) of the total number of housing units for the Project, including not less than 95 Affordable Supportive Housing Units with a depth of affordability that exceeds current City requirements for the construction of affordable housing; (2) building on-site, to modern standards, the units to replace the existing Residential Hotel Units at a replacement ratio that exceeds the requirements of the San Francisco Residential Hotel Unit Conversion and Demolition Ordinance; (3) land donation, construction and maintenance of the Joseph P. Mazzola Gardens, and construction and maintenance of publicly accessible mid-block open space, totaling approximately 23,400 square feet; and (4) improvement of Stevenson Street and Colton Street to create a shared public way for pedestrian and auto use, each as further described in this Agreement.

F. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*); "**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all

other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.

G. The Final Environmental Impact Report ("**FEIR**") prepared for the Project and certified by the Planning Commission on October 19, 2017, together with the CEQA findings (the "**CEQA Findings**") and the Mitigation Measures adopted concurrently therewith and set forth in the MMRP, comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. On December_____, 2017, the Board of Supervisors, in Motion No. [_____], affirmed the decisions of the Planning Commission to certify the FEIR and rejected the appeal of the FEIR certification. The information in the FEIR and the CEQA Findings were considered by the City in connection with approval of this Agreement.

H. On October 19, 2017, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission adopted the CEQA findings and determined among other things that the FEIR thoroughly analyzes the Project, and the Mitigation Measures are designed to mitigate significant impacts to the extent they are susceptible to a feasible mitigation, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan**

Consistency Findings"). The information in the FEIR and the CEQA Findings has been considered by the City in connection with this Agreement.

I. On December_____, 2017, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

J. On December_____, 2017, the Board adopted Ordinance Nos. [_____], amending the Planning Code, Zoning Map, and General Plan, and adopted Ordinance No. [_____], approving this Agreement (File No. [_____]) and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on January _____, 2018.

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

AGREEMENT

1. DEFINITIONS

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

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

1.2 "**Affordable Supportive Housing Units**" means the housing units to be provided in the Colton Street Affordable Housing Building as more specifically set forth in Exhibit D.

1.3 "**Agreement**" means this Development Agreement, the Exhibits which have been expressly incorporated herein and any amendments thereto.

1.4 "**AMI**" means the unadjusted median income levels derived from the U.S. Department of Housing and Urban Development on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

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

1.6 "**Applicable Laws**" has the meaning set forth in Section 5.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.7 "**Approvals**" means the City approvals, entitlements, and permits listed on Exhibit E.

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

1.9 "**Associated Community Benefits**" is defined in Section 4.1.

1.10 "**BART**" means Bay Area Rapid Transit.

1.11 "**BMR units**" has the meaning set forth in the Housing Program.

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

1.13 "**Building**" or "**Buildings**" means each of the existing, modified and new buildings on the Project Site, as described in the Project Description attached as Exhibit B.

1.14 "**CCH Property**" has the meaning set forth in Section B.4 of Exhibit D.

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

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

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

1.18 "**Chapter 56**" has the meaning set forth in Recital D.

1.19 "**CHP**" means Community Housing Partnership and its successors and assigns.

1.20 "**City**" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

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

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

1.23 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or

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

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

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

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

1.27 "**Civic Center Hotel**" means the building commonly known as the Civic Center Hotel, located at the corner of 12th and Market Streets.

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

1.29 "**Colton Street Affordable Housing Building**" has the meaning set forth in Exhibit B.

1.30 **"Colton Street Parcel**" shall mean the parcel or parcels of land on which the Colton Street Affordable Housing Building is located.

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

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

1.33 "**Community Benefits Linkages Schedule**" means the schedule attached to this Agreement as Schedule 1.

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

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

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

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

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

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

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

1.41 "**Enacting Ordinance**" has the meaning set forth in Recital J.

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

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

1.44 "**Existing Uses**" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date, as the same may be modified by the Approvals and any Later Approvals.

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

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

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

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

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

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

1.51 "**Ground Leases**" means the three ground leases between Owner and Developer, each dated ____, 2017, one that is for the Colton Street Parcel, one for the CCH Property, and one that is for the remainder of the Project Site, and each having a term of approximately 99 years. "**Ground Lease**" shall mean each of the Ground Leases, as the context requires.

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

1.53 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of Projects, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.54 **"Joseph P. Mazzola Gardens"** is described in Section 1 of Exhibit C.

1.55 "**Later Approval**" means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that

are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

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

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

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

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

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

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

1.62 **"Market and Octavia Community Improvement Impact Fee"** has the meaning set forth in Section 421 of the Planning Code.

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

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

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

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

1.67 "**Mortgage**" means a (i) mortgage, deed of trust or other lien on all or part of the Project Site to secure an obligation made by the applicable property owner and (ii) any ground lease affecting all or part of the Project Site, including the Ground Leases.

1.68 "**Mortgagee**" means (i) any mortgagee or beneficiary under a Mortgage, (ii) a person or entity that obtains title to all or part of the Project Site or the Ground Leases as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action, and (iii) any ground lessor under any ground lease affecting all or part of the Project Site, including U.A. Local 38 Pension Trust Fund and its successors.

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

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

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

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

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

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

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

1.76 "**Permit to Convert**" shall have the meaning given such term in the Residential Hotel Ordinance.

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

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

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

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

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

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

1.83 **"Project Open Space and Streetscape Improvements"** means the privately owned, publicly accessible open space described in Exhibits C and C-1, including the Joseph P. Mazzola Gardens and the privately owned, publicly accessible mid-block open space.

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

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

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

1.87 **"Public Improvements"** means the following improvements: (i) new sidewalks and curbs on Brady, Colton, and 12th Streets, (ii) repaving of Stevenson Alley and Colton Street adjacent to the open space improvements, and (iii) the improvements built under the Open Space In-Kind Agreement.

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

1.89 "**Residential Hotel Ordinance**" means the Residential Hotel Unit Conversion and Demolition Ordinance, Chapter 41 et seq. of the Administrative Code.

1.90 "**Residential Hotel Units**" means the existing seventy-one (71) residential hotel units in the Civic Center Hotel.

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

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

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

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

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

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

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

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

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

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

2. EFFECTIVE DATE; TERM

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

2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years thereafter unless extended or earlier terminated as provided herein ("**Term**"); provided, however, that (i) the Term shall be extended for each day of a Litigation Extension and (ii) Developer shall have the right to terminate this Agreement with respect to a legal parcel upon completion of the Building within that parcel and the Associated Community Benefits for that Building, as set forth in Section 7.1. The term of any conditional use permit, planned unit development, any tentative Subdivision Map, and any subsequent subdivision map shall be for the longer of (x) the Term (as it relates to the applicable parcel) or (y) the term otherwise allowed under the Subdivision Map Act or conditional use/planned unit development approval, as applicable.

3. GENERAL RIGHTS AND OBLIGATIONS

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

3.2 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce

development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement attached as Exhibit I.

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

4.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 4 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is tied to a specific Building as described in the Community Benefits Linkages Schedule attached as Schedule 1 to this Agreement or as described elsewhere in this Agreement (each, an "**Associated Community Benefit**"). Upon Developer's Commencement of Construction, the Associated Community Benefits tied to that Building shall survive the expiration or termination of this Agreement to the date of completion of the Associated Community Benefit. Time is of the essence with respect to the completion of the Associated Community Benefits.

4.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefit Programs**"):

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

(b) the Project Open Space and Streetscape Improvements, including the Open Space In-Kind Agreement obligations, all as further described in Exhibits C, C-1 and C-2 and Schedule 1.

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

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

(b) Developer shall have obtained all Later Approvals necessary to Commence Construction of the applicable Building to which the Associated Community Benefit is tied, and the same shall have been Finally Granted, except to the extent that such Later Approvals have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit at or before completion of a Building, the City may withhold a certificate of occupancy for that Building until the required Associated Community Benefit is completed or Developer has provided the City with adequate security for completion of such Associated Community Benefit (*e.g.,* a bond or letter of credit) as approved by the Planning Director in his or her reasonable discretion (following consultation with the City Attorney). In determining the need for and reasonableness of any such security, the Planning Director (in consultation with the City Attorney) shall

consider any existing or proposed security, such as any bonds required under the Subdivision Map Act; and

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

4.3 No Additional CEQA Review Required; Reliance on FEIR for Future Discretionary Approvals. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (a) the FEIR contains a thorough analysis of the Project and possible alternatives, (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the FEIR, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

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

Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

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

4.5 City Cost Recovery.

4.5.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 5.7.

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

4.5.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 4.5.4 from the City.

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

The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

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

4.6 Prevailing Wages. Developer agrees that all persons performing labor in the construction of the Public Improvements on the Project Site shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent with the requirements of Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and Developer shall include this requirement in any construction contract entered into by Developer for any such public improvements. Upon request, Developer and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this Section. Without limiting the foregoing, Developer shall comply with all applicable state law requirements relating to the payment of prevailing wages.

4.7 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims

("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement.

To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

5. VESTING AND CITY OBLIGATIONS

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

5.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing**

Standards"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 5.6, and (iii) this Agreement (collectively, "**Applicable Laws**").

5.3 Criteria for Later Approvals. Developer shall be responsible for obtaining all required Later Approvals before the start of any construction. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval based upon an item or element that is consistent with the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Planning Code and the Approvals and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" under this Agreement.

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

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

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

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

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

(b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual Buildings or other improvements that are part of the Project under the Approvals;

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

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

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

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

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

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

(j) increase the percentage of required affordable or BMR Units, change the AMI percentage levels for the affordable housing pricing or income eligibility, change the requirements regarding unit size or unit type, or increase the amount or change the configuration of required open space; or

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 5.7.2).

5.6.2 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, and shall subdivide the Project Site to create separate parcels for the CCH Property and the Colton Street Parcel before starting construction of the Project as shown generally in Exhibit B. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals. Developer shall cause any Mortgagee to provide its authorized signature on any final subdivision map with respect to the Project, which shall include consent and acknowledgement of the BMR units and Affordable Supportive Housing Units requirements, with specified AMI levels, for the life of the Project, in accordance with this Agreement.

5.7 Fees and Exactions.

5.7.1 Generally. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 5.7, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required

contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 5.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

5.7.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) those Impact Fees and Exactions specifically set forth on Schedule 1 and Exhibits C and D, (ii) the SFPUC Capacity Charges, and (iii) New City Laws that do not conflict with this Agreement as set forth in Section 5.6, and (iv) as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined. Accordingly, Developer shall be subject to any increase or decrease in the fee amount payable and any changes in methodology of calculation (e.g., use of a different index to calculate annual increases) but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date except as described in Section 5.6 and this Section. Developer agrees that any new impact fee or exaction enacted after the Effective Date that (i) is of City-wide applicability or is applicable to the entire the Market & Octavia Area Plan area (e.g., applies to all retail development in the City or only retail development within the boundaries of the entire Market & Octavia Area Plan), (ii)

does not pertain to affordable housing, open space or community improvements (for which this Agreement reflects the required Developer contributions), and (iii) would otherwise apply to the Project, shall apply to the Project or the applicable portion thereof. Notwithstanding the foregoing, City and Developer acknowledge that, as of the date of this Agreement, the City intends to enact a new plan area known as the "Hub", the boundaries of which would include the Project Site, and that such Hub plan area may provide height increases or other opportunities for more dense development in return for higher affordability requirements and other impact fees. City and Developer agree that the Project shall not be subject to any Hub plan area controls, including affordability requirements, and any new Hub plan area Impact Fees and Exactions, so long as the Project is developed substantially in accordance with the terms and provisions of this Agreement, as opposed to being developed pursuant to the controls of the Hub plan if and when such plan is enacted.

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

5.8 Changes in Federal or State Laws.

5.8.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"),

including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

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

5.8.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute 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.

5.8.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 5.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 5.8 would materially and adversely affect or limit the Community Benefits (a "**Law Adverse to the City**"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then either party shall have the right to seek available remedies at law or in equity to maintain the benefit of the bargain or alternatively to seek termination of this Agreement if the benefit of the bargain cannot be maintained in light of the Law Adverse to Developer or Law Adverse to the City.

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

5.10 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 8. The Planning Director, acting on behalf of the City, shall execute and return such certificate within forty-five (45) days following receipt of the request.

5.11 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site,

which uses must be consistent with those uses allowed under the Project's zoning and the Project SUD.

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

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building commenced by Developer as set forth in Section 4.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by

this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

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

7.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals and this Agreement, and to undertake and complete all actions

or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Later Approvals are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for the Project.

7.2.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

7.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal (other than, in the case of a partial termination by Developer, any defense costs with respect to the remaining portions of the Project). Notwithstanding the foregoing, if Developer

conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project (and only as to such portion), and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

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

7.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Later Approvals.

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

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

8.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director

shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

8.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 8.2.

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

8.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this

Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

8.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each 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 to whom the determination is made and the portions of the Project Site in which such Party has an interest.

8.2.4 Default. The rights and powers of the City under this Section 8.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of a Default.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

9.1 Enforcement. As of the date of this Agreement, the only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for

successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

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

9.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any

notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site.

9.4 Remedies.

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

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

9.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 9.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by

Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

9.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments due the City from Developer are past due; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City. The City shall have the right to withhold a final certificate of occupancy for a Building until all of the Associated Community Benefits tied to that Building have been completed. For a Building to be deemed completed Developer shall have completed all of the streetscape and open space improvements described in Exhibit B, or a Later Approval, for that Building; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance.

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

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

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

practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. FINANCING; RIGHTS OF MORTGAGEES

10.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site, or Developer's interest in the ground lease, for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site other than the Ground Leases.

10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 10.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, termination of any ground lease (including reversion of the fee interest to the ground lessor follow such termination), or other remedial action (including ground lease termination), shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action (including ground lease termination), obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 4.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this

Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

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

10.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 10.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any

Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage, terminate the ground lease or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion or, in the case of a ground lease, terminates the ground lease within sixty (60) days after giving such notice; and (iii) after obtaining title or terminating the ground lease, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

10.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage or by termination of a ground lease (including reversion of the fee interest to the ground lessor following such termination), acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent

applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 4.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

10.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee or any Mortgagee's ground leasehold interest. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's (or Owner's, if a ground lease terminates) rights or obligations under this Agreement or constitute a default under this Agreement.

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

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

11.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided, however, that following a Transfer, the City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than

upon the expiration of the Term and except as provided in Sections 2.2, 7.2.2, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

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

11.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the

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

11.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement. And no change to the Project that is permitted under the Project SUD shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the Project SUD, and any such changes shall not be deemed to conflict with or require an amendment to this

Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

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

11.5.1 Litigation and Referendum Extension. If any litigation is filed challenging this Agreement or an Approval having the direct or indirect effect of delaying this Agreement or any Approval (including but not limited to any CEQA determinations), including any challenge to the validity of this Agreement or any of its provisions, or if this Agreement or an Approval is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, the date of the initial grant of such Approval) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a

permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

12.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with

respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Transferee (*i.e.*, the person or entity that is the Developer for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

12.1.1 Transfer of Colton Street Affordable Housing Building. The City acknowledges that, as set forth in Section A.2 of Exhibit D (Affordable Housing Program) to this Agreement, Developer intends to enter into a joint venture with CHP or an affiliate thereof to build the Colton Street Affordable Housing Building and, following completion of the Colton Street Affordable Housing Building, transfer such building to Community Housing Partnership or to an entity that Community Housing Partnership directly or indirectly controls, or of which Community Housing Partnership is directly or indirectly a managing partner or managing member, or as to which Community Housing Partnership has the right to dictate major decisions of the entity or to appoint fifty percent (50%) or more of the managers or directors of such entity. Any such transfer shall be subject to Developer's fulfillment, in all material respects, of its obligations pursuant to Section A.2 of Exhibit D (Affordable Housing Program) to this

Agreement. Such transfer of the Colton Street Affordable Housing Building shall be subject to the affordability restrictions set forth in the Housing Program, and shall not occur before recordation of approved affordability restrictions for the site. The City agrees that its consent shall not be required for such transfer, but Developer shall notify City of such transfer within thirty (30) days following the transfer. From and after the effective date of such transfer, the Colton Street Parcel and all improvements thereon shall be released from this Agreement and shall no longer be subject to the terms and conditions of this Agreement, but shall remain subject to the recorded affordability restrictions and the supportive housing requirements set forth therein and the requirements of the Workforce Agreement that, by their terms, continue to apply. Developer anticipates that such transfer will be by means of a sublease agreement or similar instrument, the term of which would be co-terminous with the Ground Lease for the Colton Street Parcel, but the affordability restrictions will run with the land and remain enforceable for the life of the Project.

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

after the Director of Planning's receipt of such material changes. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 12.1 shall not require the transfer of land or any other real property interests to the CMA.

12.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 12.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 8 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

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

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

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

12.6 Rights of Developer. The provisions in this Section 12 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership

agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, termination of ground lease, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

13.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the ground lessee of the Project Site, with the right and authority to enter into this Agreement. Developer is a California limited liability company, duly organized and validly existing and in good standing under the Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

13.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

13.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter,

Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

13.4 Notification of Limitations on Contributions. Through 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 the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

13.5 Other Documents. To the current, actual knowledge of Michael Cohen, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

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

14. MISCELLANEOUS PROVISIONS

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

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

14.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 12, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their

respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 12, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

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

14.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

14.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

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

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

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

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

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

To City:

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

with a copy to:

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

To Developer:

Strada Brady LLC
c/o Strada Investment Group
101 Mission Street
Suite 420
San Francisco, CA 94105
Attn: Michael Cohen

14.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any

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

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

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

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

14.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

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

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

or for any amount which may become due to City, its successors and assign, under this Agreement.

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

RECOMMENDED:

By:

_____
Kate Hartley,
Interim Director, MOHCD

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

DEVELOPER:

STRADA BRADY LLC,
a California limited liability company

By: _____

Name: _____

Its: _____

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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

State of California)
County of San Francisco)

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

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County of San Francisco)

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

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Signature _____

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State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

Exhibit A

Project Site Legal Descriptions

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

Block 3505/Lot 001

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHWESTERLY LINE OF 12TH STREET WITH THE SOUTHEASTERLY LINE OF MARKET STREET; THENCE RUNNING SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF MARKET STREET 25 FEET 11 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY AND PARALLEL WITH 12TH STREET. 90 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY AND PARALLEL WITH MARKET STREET 50 FEET; THENCE AT RIGHT ANGLES SOUTHEASTERLY AND PARALLEL WITH 12TH STREET 75 FEET TO THE NORTHWESTERLY LINE OF STEVENSON STREET; THENCE NORTHEASTERLY ALONG SAID LINE OF STEVENSON ST. 75 FEET 11 INCHES TO THE SOUTHWESTERLY LINE OF 12TH STREET; THENCE NORTHWESTERLY ALONG SAID LINE OF 12TH STREET 165 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF THE MISSION BLOCK NO. 13.

Assessor's Lot 001; Block 3505

Block 3505/Lot 007

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF STEVENSON STREET, DISTANT THEREON 75 FEET, 11 INCHES SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 12TH STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF STEVENSON STREET 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 25 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF MISSION BLOCK NO. 13.

Assessor's Lot 007; Block 3505

Block 3505/Lot 008

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF STEVENSON STREET, DISTANT THEREON 100 FEET, 11 INCHES SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 12TH STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF STEVENSON STREET 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 100 FEET TO THE POINT OF BEGINNING.

BEING PART OF MISSION BLOCK NO. 13.

Assessor's Lot 008; Block 3505

Block 3505/Lot 027

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF COLTON STREET DISTANT THEREON 79 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BRADY STREET; AND RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF COLTON STREET 21 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 60 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 21 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 60 FEET AND 6 INCHES TO THE POINT OF BEGINNING.

BEING A PART OF MISSION BLOCK NO. 13.

Assessor's Lot 027; Block 3505

Block 3505/Lot 028

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF COLTON STREET DISTANT THEREON 100 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BRADY STREET; AND RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF COLTON STREET 81 FEET AND 4 1/2 INCHES TO THE SOUTHWESTERLY LINE OF COLUSA PLACE (FORMERLY COLTON PLACE); THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG SAID LINE OF COLUSA PLACE 80 FEET TO THE NORTHWESTERLY LINE OF CHASE COURT (FORMERLY COLTON COURT); THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF CHASE COURT 81 FEET AND 4 1/2 INCHES; AND THENCE AT A RIGHT ANGLE NORTHWESTERLY 80 FEET TO THE POINT OF BEGINNING.

BEING LOT NUMBERED 51 AS DESIGNATED ON THAT CERTAIN MAP ENTITLED "MAP OF THE PACIFIC IMPROVEMENT COMPANY'S SUBDIVISION OF MISSION BLOCKS NOS 13 AND 14", DATED FEBRUARY 07, 1896, AND FILED FEBRUARY 08, 1896, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

Assessor's Lot 028; Block 3505

Block 3505/Lot 029

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF COLTON STREET, DISTANT THEREON 179 FEET AND 6 INCHES NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BRADY STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF COLTON STREET 27 FEET AND 10 1/2 INCHES; THENCE AT A RIGHT ANGLE NORTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 27 FEET AND 10 1/2 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 100 FEET TO THE POINT OF BEGINNING.

BEING A PART OF MISSION BLOCK NO. 13.

Assessor's Lot 029; Block 3505

Block 3505/Lot 031

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF COLTON STREET, DISTANT THEREON 50 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BRADY STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF COLTON STREET 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

Assessor's Lot 031; Block 3505

Block 3505/Lot 031A

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF BRADY STREET AND THE NORTHWESTERLY LINE OF COLTON STREET; RUNNING THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE OF BRADY STREET 50 FEET; THENCE AT A RIGHT NORTHEASTERLY 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 50 FEET TO THE SAID NORTHWESTERLY LINE OF COLTON STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF COLTON STREET 50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

Assessor's Lot 031A; Block 3505

Block 3505/Lot 032

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHEASTERLY LINE OF MARKET STREET WITH THE NORTHEASTERLY LINE OF BRADY STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF MARKET STREET 140 FEET 4 1/2 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 180 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 140 FEET 4 1/2 INCHES TO THE NORTHEASTERLY LINE OF BRADY STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY ALONG SAID LINE OF BRADY STREET 180 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

Assessor's Lot 032; Block 3505

Block 3505/Lot 032A

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MARKET STREET DISTANT THEREON 140 FEET 4 1/2 INCHES NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BRADY STREET; RUNNING THENCE NORTHEASTERLY AND ALONG SAID LINE OF MARKET STREET 67 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 180 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 67 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 180 FEET TO THE POINT OF BEGINNING.

BEING PART OF MISSION BLOCK NO. 13.

Assessor's Lot 032A; Block 3505

Block 3505/Lot 033

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MARKET STREET, DISTANT THEREON 75 FEET 11 INCHES SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF TWELFTH STREET; RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF MARKET STREET 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 165 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 75 FEET; AND THENCE AT A RIGHT ANGLE NORTHWESTERLY 165 FEET TO THE POINT OF BEGINNING.

BEING A PART OF MISSION BLOCK NO. 13.

Assessor's Lot 033; Block 3505

Block 3505/Lot 033A

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MARKET STREET, DISTANT THEREON 25 FEET 11 INCHES SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF TWELFTH STREET; RUNNING THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF MARKET STREET 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 90 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 50 FEET; AND THENCE AT A RIGHT ANGLE NORTHWESTERLY 90 FEET TO THE POINT OF BEGINNING.

BEING A PART OF MISSION BLOCK NO. 13.

Assessor's Lot 033A; Block 3505

Block 3505/Lot 035

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF BRADY STREET, DISTANT THEREON 50 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF COLTON STREET; AND RUNNING THENCE NORTHWESTERLY ALONG THE SAID NORTHEASTERLY LINE OF BRADY STREET 50 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 179 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 100 FEET TO THE NORTHWESTERLY LINE OF COLTON STREET; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF COLTON STREET 9 FEET 6 INCHES; THENCE AT A RIGHT ANGLE NORTHWESTERLY 80 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 70 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 30 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET TO THE NORTHEASTERLY LINE OF BRADY STREET AND THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

Assessor's Lot 035; Block 3505

Exhibit B

Project Description and Site Plan

The Project is a mixed-use development consisting of new construction, the partial retention and rehabilitation of two existing buildings, and new public and private open space, substantially in accordance with Attachment B-1. The development program includes up to approximately 501,000 square feet of building space, including up to approximately: 455,900 square feet of residential uses (up to 584 units), 13,000 square feet of retail/restaurant uses, 32,100 square feet of labor union facilities and meeting hall space, 33,500 square feet of privately owned, publicly accessible open space and residential common open space, 316 vehicle parking spaces, 231 Class 1 bicycle parking spaces, and 42 Class 2 bicycle parking spaces. The Project contains up to six buildings, including four new buildings and two partially retained and rehabilitated buildings.

1. Colton Street Affordable Housing Building

Construction of approximately 100, but not less than 95, Affordable Supportive Housing Units, 68-foot tall residential building containing approximately 46,300 square feet devoted to residential use and supportive social services, including up to 600 square feet of common open space.

2. Building A

Demolition of the majority of the Lesser Brothers Building (while retaining its character-defining elements) at 1629-45 Market Street, and the addition of an up to 190-unit (of which 12% of the units will be BMR units), 85-foot-tall (10-story) addition containing approximately 157,600 square feet devoted to residential use, up to 6,600 square feet of ground-floor retail space on Market Street and Brady Street, approximately 1,100 square feet of publicly accessible open space on the western frontage of the building facing Brady Street, approximately 2,100 square feet of private and common open space on the eastern frontage of the building facing the mews, a roof deck providing up to 3,000 square feet of common open space, and up to two subterranean levels of vehicle and bicycle parking and loading, including up to 104 vehicle parking spaces, 92 Class 1 bicycle parking spaces, and two off-street loading spaces.

3. Building B

Demolition of the existing UA Local 38 facility at 1621 Market Street and construction of a new, up to 170-unit (of which 12% of the units will be BMR units), 85-foot-tall (10-story) building, between the new UA Local 38 union hall building and Building A, containing up to 144,500 square feet devoted to residential use, 2,700 square feet of ground-floor retail space on Market Street, an approximately 2,200 square foot residential common open space, and up to two subterranean levels of vehicle parking and loading, including up to 212 vehicle parking spaces and two full-size off-street loading spaces.

4. Building C

Rehabilitation of the Civic Center Hotel (approximately 57 feet tall) to contain up to 60 units (of which 12% of the units will be BMR units) in approximately 36,700 square feet devoted to residential use and 3,700 square feet of ground-floor retail on 12th Street.

5. Building D

Construction of a new up to 64-unit (of which 12% of the units will be BMR units), 85-foot-tall (9 story) building containing approximately 71,700 square feet devoted to residential use, a roof deck providing up to 1,500 square feet of common open space on the roof, a 700 square foot residential common open space at the southeast corner of the building, and a designated move-in/move-out loading space adjacent to the building.

6. Plumbers' Union Hall Building

Construction of a new, 58-foot tall building containing up to 32,100 square-feet devoted to U.A. Local 38 union activities.

7. Joseph P. Mazzola Gardens

Construction, operations, and maintenance of a 7,800 square-foot, ground-level, publicly accessible open space, including planted areas and children's play equipment. Developer is providing the Joseph P. Mazzola Gardens as an in-kind, publicly accessible open space.

8. Public Plaza and Mews

Construction, operations, and maintenance of approximately 15,600 square feet of publicly accessible, ground-level open space in the form of plaza areas and a mid-block passage from Market Street to Colton Street.

9. Private and Common Open Space

Construction, operation, and maintenance of approximately 10,100 square feet of open space accessible to building residents. This includes common courtyards and roof decks, as well as any private stoops or patios.

10. Streetscape and Access Improvements (*subject to Later Approvals)*

The Project would include two driveways across the existing sidewalks: one 19-foot-wide driveway along Brady Street that would use an existing curb cut, and a 24-foot-wide curb cut on Stevenson Street, approximately 140 feet west of the intersection of Stevenson and 12th Streets, which would provide access to the two-level parking garage located under Buildings A and B. In addition, the project may include, if approved by the City, a bulbout across Brady Street that would require a new 20-foot wide curb cut. Additionally, the Project envisions the improvement of Stevenson Street and Colton Street to create a shared public way for pedestrian and auto use. The Project would maintain existing sidewalk widths on Brady, Colton, and Market Streets immediately surrounding the Project site and would provide its share of streetscape

improvements along the west side of 12th Street as part of a larger plan by the City and other project sponsors to improve 12th Street in the vicinity of the Project site.

11. Loading

The Project includes two loading spaces in each of parking garages under Buildings A and B for a total of four on-site loading spaces. An off-site dedicated move-in/move-out loading area is proposed off of Stevenson Street, at the northeast corner of the D Building. Three additional on-street loading zones are also proposed along Brady and 12th Streets.

[ADD ATTACHMENT B-1, SITE PLAN]

Exhibit C

Project Open Space

The Project would provide the following open space, substantially in accordance with Attachment C-1 and as may be further described in Schedule 1 attached to the Agreement:

1. Joseph P. Mazzola Gardens. The Project would include the construction, operations, and maintenance of a 7,800 square-foot ground-level open space substantially in accordance with the attached Open Space and Streetscape Plan (the "Joseph P. Mazzola Gardens"). The Joseph P. Mazzola Gardens would be privately owned but publicly accessible and would constitute Developer's in-kind contribution in satisfaction of the requirements of Section 421 of the Planning Code (the Market and Octavia Community Improvement Impact Fee).

2. Plaza Areas and Mid-Block Passage. The Project would include the construction, operations, and maintenance of approximately 15,600 square feet of publicly accessible, ground-level open space in the form of plaza areas and a mid-block passage from Market Street to Colton Street. Developer will use commercially reasonable efforts to enter into an agreement with BART to improve the BART Parcel in a way that better integrates BART's infrastructure with the adjacent Joseph P. Mazzola Gardens and the Plaza Areas and Mid-Block Passage. BART would continue to own its approximately 5,600-square-foot parcel, and all improvements would be subject to BART's operational needs and permitting requirements.

3. Streetscape Improvements. The Project would include improvements to strengthen the network of existing alleys and streets that bound the Project Site including Colton Street, Stevenson Street, Brady Street, and 12th Street. Sidewalk and streetscape improvements will focus on the Project's adjacency to Colton Street, Stevenson Street, and the west side of 12th Street.

4. Provision of Code-Required Open Space. The amount and phasing of private and/or common usable open space for the residential uses on the Project Site shall be governed by the Project SUD.

[ADD ATTACHMENT C-1, OPEN SPACE AND STREETSCAPE PLAN]

Exhibit C-1

Open Space In-Kind Contribution

The Project would provide the following open space, to be developed substantially in accordance with the Open Space and Streetscape Plan in Attachment C-1, and in the manner described in Schedule 1 attached to the Agreement, in satisfaction of the requirements of Section 421 of the Planning Code (the Market and Octavia Community Improvement Impact Fee) and the Project's Required Open Space:

1. Open Space In-Kind Contribution. Developer would contribute the private land for the Joseph P. Mazzola Gardens (as described in Section 1 in Exhibit C above) and construct the improvements for the Joseph P. Mazzola Gardens, thereby satisfying the Project's Market and Octavia Community Infrastructure Impact Fee requirements. The land value for the Joseph P. Mazzola Gardens is $7,500,000 and construction costs for the Joseph P. Mazzola Gardens will equal or exceed $1,120,568. Combined, the foregoing amounts total $8,620,568 and such total sum exceeds by $3,992,922 the amount of the Market and Octavia Community Infrastructure Impact Fee of $4,627,664 which would otherwise be payable.

2. Open Space In-Kind Agreement. Developer and the City would enter into the Open Space In-Kind Agreement attached hereto as Exhibit C-2 in order to memorialize Developer's obligations to construct, operate and maintain the Joseph P. Mazzola Gardens.

Exhibit C-2

Open Space In-Kind Agreement

THIS IN-KIND AGREEMENT ("**Agreement**") is entered into as of_____, 2017, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the **"City"**) and STRADA BRADY LLC, a California limited liability company (**"Project Sponsor"**), with respect to a development project approved for the approximately 2.2 acre (approximately 97,617 square foot) area generally between Market, 12th, Stevenson, Chase Court, and Brady Streets, including 20 – 12th Street, 53 Colton Street, 76 Colton Street, 41 Brady Street, 1637 Market Street, 1621 Market Street, and 1601 Market Street, San Francisco, California (the **"Project"**).

RECITALS

A. Article 4 of the San Francisco Planning Code authorizes the City, acting through the Planning Commission, and the sponsor of a development project in specified areas of the City to enter into an In-Kind Agreement that would allow the project sponsor to directly provide community improvements to the City as an alternative to payment of all or a portion of a fee that would be imposed on the development project in order to mitigate the impacts caused by the development project. Any undefined term used herein shall have the meaning given to such term in Article 4 of the Planning Code.

B. This Agreement shall not be effective until it has been signed by both the Project Sponsor and the City, is approved as to form by the City Attorney, and is approved by the Planning Commission. The date upon which the foregoing requirements have been satisfied shall be the **"Effective Date."** This Agreement is being entered into concurrently with, and as a part of, a development agreement between City and Developer relating to the Project (the "**Development Agreement**").

C. The property described in **Exhibit A** attached hereto and generally known as Block 3505: Lots 031, 031a and 035 (the **"Land"**) is ground leased by Project Sponsor pursuant to a ground lease with U.A. Local 38 Pension Trust Fund, which holds fee title to the Land (the "**Ground Lease**"). The actual boundaries of the Land will be revised as part of Developer's subdivision and mapping process, and the final legal description for the portion of the Land that will become the Joseph P. Mazzola Gardens will be attached to the Easement (as defined below). Project Sponsor submitted an application for the development of a project, which includes development on the Land and on other areas in the vicinity of the Land, that is subject to the Market and Octavia Community Improvement Impact Fee pursuant to Section 421 of the Planning Code that is currently estimated to be $4,627,664 (the **"Fee"**).

D. Pursuant to the provisions of Article 4 of the Planning Code, the Project Sponsor has requested that the City enter into an In-Kind Agreement associated with the Project in order to satisfy its Fee obligation under Section 421.3(d) of the Planning Code. The in-kind improvements consist of a development of public open space improvements in a portion of the

Project to create a public open space referred to herein as "Joseph P. Mazzola Gardens," or the "Gardens" as more particularly described in **Exhibit B** (**"In-Kind Improvements"**).

E. The value of the In-Kind Improvements, together with the land value of the Easement, is anticipated to exceed the amount of the Fee waiver that would be made by the City pursuant to this Agreement, and Project Sponsor has offered to contribute such excess value as part of the Development Agreement. Project Sponsor has also offered to assume full responsibility for the operation of the In-Kind Improvements, full physical maintenance responsibility for the In-Kind Improvements and liability relating to the construction and maintenance of the In-Kind Improvements for the life of the Project.

F. The In-Kind Improvements meet the identified community need for parks and open spaces in the Market and Octavia plan area, and are not a physical improvement or provision of space otherwise required by the Project entitlements or other City Code.

G. On _____, 2017 Project Sponsor presented its plans and cost estimates for the Gardens to the Market and Octavia Citizens Advisory Committee, which expressed its support for the Gardens.

H. On _____, 2017 Project Sponsor presented its plans and cost estimates for the Gardens to the Interagency Plan Implementation Committee, which expressed its support for the Gardens.

I. On _____, 2017 (Motion No. _____), the Planning Commission approved the Fee waiver and authorized the Director of Planning to enter into this Agreement.

J. The City and the Project Sponsor are willing to enter into this Agreement on the terms and conditions set forth below.

AGREEMENT

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

ARTICLE 1
DEFINITIONS

Defined Terms. As used in this Agreement, the following words and phrases have the following meanings.

"**Agreement**" shall mean this Agreement.

"**Building A**" shall have the meaning given such term in the Development Agreement.

"**City**" shall have the meaning set forth in the preamble to this Agreement.

"**Date of Satisfaction**" shall have the meaning set forth in Section 5.3 below.

"**Development Agreement**" shall mean that certain Development Agreement between the City and Project Sponsor with respect to the Project.

"**Development impact fee**" or "**Fee**" shall mean the fee charged to development projects under Article 4, Section 421 of the Planning Code.

"**DBI**" shall mean the City's Department of Building Inspection.

"**DPW**" shall mean the City's Department of Public Works.

"**Easement**" shall have the meaning set forth in Section 4.5 below.

"**Effective Date**" shall have the meaning set forth in Recital B.

"**First Construction Document**" shall have the meaning set forth in Section 401 of the Planning Code.

"**Ground Lease**" means that certain Ground Lease between Owner and Developer relating to the Project Site, dated _____, 2017, and having a term of 99 years.

"**In-Kind Improvements**" shall have the meaning set forth in Recital D.

"**In-Kind Value**" shall have the meaning set forth in Section 3.2 below.

"**Land**" shall have the meaning set forth in Recital C.

"life of the Project" shall mean the life of Building A.

"**Notice of Satisfaction**" shall have the meaning set forth in Section 5.3 below.

"**Payment Analysis**" shall have the meaning set forth in Section 5.2 below.

"**Payment Documentation**" shall have the meaning set forth in Section 5.1 below.

"**Plans**" shall have the meaning set forth in Section 4.2 below.

"**Project**" shall have the meaning set forth in the preamble to this Agreement.

"**Project Sponsor**" shall have the meaning set forth in the preamble to this Agreement.

"**Project Fee**" shall mean the Market and Octavia Community Improvement Impact Fee applicable to the Project, as calculated pursuant to Section 3.1 below.

"**Security**" shall have the meaning set forth in Section 5.4 below.

ARTICLE 2
PROJECT SPONSOR REPRESENTATIONS AND COVENANTS

The Project Sponsor hereby represents, warrants, agrees and covenants to the City as follows:

2.1 The above recitals relating to the Project are true and correct.

2.2 Project Sponsor: (1) is a limited liability company duly organized and existing under the laws of the State of California, (2) has the power and authority to lease and own its properties and assets and to carry on its business as now being conducted and as now contemplated to be conducted, (3) has the power to execute and perform all the undertakings of this Agreement, and (4) is the sole ground lessee of the Land on which the Project is located.

2.3 The execution and delivery of this Agreement and other instruments required to be executed and delivered by the Project Sponsor pursuant to this Agreement: (1) have not violated and will not violate any provision of law, rule or regulation, any order of court or other agency or government, and (2) have not violated and will not violate any provision of any agreement or instrument to which the Project Sponsor is bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

2.4 No document furnished or to be furnished by the Project Sponsor to the City in connection with this Agreement contains or will contain 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.

2.5 Neither the Project Sponsor, nor any of its principals or members, 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 during the past five (5) years.

2.6 Pursuant to Section 421.3(d)(5) of the Planning Code, the Project Sponsor shall reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with this Agreement.

ARTICLE 3
CALCULATION OF FEE AND IN-KIND CREDIT

3.1 The Project Fee has been calculated in accordance with Section 421.3 of the Planning Code and totals $4,627,664 based on the Project as approved. (For the fee calculations, see **Exhibit C**.)

3.2 Based on two cost estimates and an appraisal provided by independent sources, the Director of Planning determines that the In-Kind Improvements and Easement have a value of approximately $8,620,568(the **"In-Kind Value"**); provided, however, if upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 shall apply. Documentation establishing the estimated third-party eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as **Exhibit D** (the "**Cost Documentation**").

3.3 On the Date of Satisfaction, the Project Sponsor shall receive a credit against the Project Fee in the amount of the In-Kind Value, subject to Section 5.1 below.

ARTICLE 4
CONSTRUCTION OF IN-KIND IMPROVEMENTS

4.1 **Conditions of Performance.** The Project Sponsor agrees to take all steps necessary to construct and provide, at the Project Sponsor's sole cost, the In-Kind Improvements for the benefit of the City and the public if and when the Project Sponsor constructs Building A,

in accordance with the terms and conditions of the Development Agreement, and the City shall accept the In-Kind Improvements in lieu of the Project Fee under this Agreement if this Agreement is still in effect and each of the following conditions are met:

4.2 **Plans and Permits.** The Project Sponsor shall cause an appropriate design professional to prepare detailed plans and specifications for the In-Kind Improvements, which plans and specifications shall be submitted for review and approval by DBI, DPW and other applicable City departments or agencies in the ordinary course of the process of obtaining a site or building permit for Building A (upon such approval, the **"Plans"**). The Project Sponsor shall be responsible for obtaining all permits and approvals from other affected departments that are necessary to implement this proposal. Review and approval of the plans and specifications of the In-Kind Improvements by the City's Planning Department shall not be unreasonably withheld, delayed or conditioned. The Project Sponsor shall be responsible, at no cost to the City, for completing the In-Kind Improvements strictly in accordance with the approved Plans and shall not make any material change to the approved Plans during the course of construction without first obtaining the Director of Planning's written approval. Upon completion of the In-Kind Improvements, the Project Sponsor shall furnish the City with a copy of the final approved Plans for the In-Kind Improvements and documentation of any material changes or deviations therefrom that may occur during construction of the In-Kind Improvements.

4.3 **Construction.** Subject to the provisions of Article 5 below, all construction with respect to the In-Kind Improvements shall be accomplished prior to the first certificate of occupancy for Building A, including any temporary certificate of occupancy. The In-Kind Improvements shall be installed in accordance with good construction and engineering practices and applicable laws. The Project Sponsor, while performing any construction relating to the In-Kind Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to the surrounding property, and the risk of injury to members of the public, caused by or resulting from the performance of such construction. All construction relating to the In-Kind Improvements shall be performed by licensed, insured and bonded contractors.

4.4 **Inspections.** The Project Sponsor shall request the customary inspections of the In-Kind Improvement work by DBI, DPW and all other applicable City departments or agencies during construction using applicable City procedures in accordance with the City's Building Code and other applicable law. Upon final completion of the work and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify all applicable City departments or agencies that the In-Kind Improvements have been completed. The City departments or agencies shall inspect the site to confirm compliance with applicable City standards for the work. This condition will not be satisfied until all applicable City departments and agencies have certified that the In-Kind Improvements are complete and ready for their intended use, including the City Engineer's issuance of a Determination of Completion.

4.5 **Completion of In-Kind Improvements.** Upon final completion of the In-Kind Improvements and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify the Director of Planning that the In-Kind Improvements have been completed. The Director of Planning, or his or her agent, shall inspect the site to confirm compliance with this Agreement, and shall promptly notify the Project Sponsor if there are any problems or deficiencies. The Project Sponsor shall correct any such problems or deficiencies and then request another inspection, repeating this process until the Director of Planning approves the In-Kind Improvements as satisfactory. Such approval shall be based on the requirements of this Agreement and shall not be unreasonably withheld. If the Director of Planning approves the In-Kind Improvements as satisfactory, the Project Sponsor shall promptly deliver to the Director of Planning an original copy of the easement agreement attached as **Exhibit E** (the "**Easement**"),

duly executed by Project Sponsor and notarized. Upon execution and delivery, the parties shall record the Easement.

ARTICLE 5
SATISFACTION OF OBLIGATIONS

5.1 **Evidence of Payment.** The Project Sponsor shall provide the Planning Department with documentation substantiating payment by the Project Sponsor of the cost of providing the In-Kind Improvements in the form of third-party checks and invoices and its or its general contractor's standard general conditions allocation (the **"Payment Documentation"**). The Payment Documentation shall include information necessary and customary in the construction industry to verify the Project Sponsor's costs and payments. The cost of providing the In-Kind Improvements shall not be significantly higher than the average capital costs for the City to provide comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion.

5.2 **Payment Analysis.** The City shall provide the Project Sponsor with a written report of its review of the Payment Documentation (**"Payment Analysis"**) within ten (10) business days of its receipt thereof, which review shall be conducted for the exclusive purpose of determining whether the Payment Documentation substantially and reasonably documents that the cost of providing the In-Kind Improvements shall not be significantly higher than the average capital costs for the City to provide comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion.

5.2.1 If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements that, when combined with value of the Easement, represent a sum that is less than the In-Kind Value, the Project Sponsor shall, within sixty (60) days of the date of the Payment Analysis, pay the City an amount equal to the difference between the In-Kind Value and the sum of the actual amount paid in respect of the In-Kind Improvements by the Project Sponsor and the value of the Land. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements that, when combined with the value of the Land, represent a sum equal to or greater than the In-Kind Value, then the Project Sponsor shall not be entitled to a refund of such overpayments and the City shall not be entitled to any additional funds related to the In-Kind Value.

5.2.2 The City and Project Sponsor shall endeavor to agree upon the Payment Analysis. If they are unable to so agree within thirty (30) days after receipt by Project Sponsor of the City's Payment Analysis, Project Sponsor and the City shall mutually select a third-party engineer/cost consultant. The City shall submit its Payment Analysis and Project Sponsor shall submit the Payment Documentation to such engineer/cost consultant, at such time or times and in such manner as the City and Project Sponsor shall agree (or as directed by the engineer/cost consultant if the City and Project Sponsor do not promptly agree). The engineer/cost consultant shall select either the City's Payment Analysis or Project Sponsor's determination pursuant to the Payment Documentation, and such determination shall be binding on the City and Project Sponsor.

5.3 **Satisfaction of Obligations.** Upon agreement of the Payment Analysis and completion of the In-Kind improvements, the Director of Planning shall provide the Project Sponsor with a Notice of Satisfaction of Obligations (the "**Notice of Satisfaction**") that certifies that the In-Kind Improvements have been inspected and been determined to be ready for use by

the public based on current City standards, and constitute the full satisfaction of the obligation to provide In-Kind Improvements in the form required hereunder, and that the City has received full payment in an amount equal to the difference between the In-Kind Value and the actual amount paid in respect of the In-Kind Improvements by the Project Sponsor. The Project Sponsor shall not receive final credit for the In-Kind Improvements until the Notice of Satisfaction is delivered, the Easement required by Article 8 is recorded, the City receives any additional payments as may be required under this Article 5, and all other obligations of the Project Sponsor under this Agreement have been satisfied (the **"Date of Satisfaction"**).

5.3.1 Notwithstanding the provisions of Article 7 of this Agreement, the notices given by the parties under this Section 5.3 may be in the written form and delivered in the manner mutually agreed upon by the parties. The City may, in its sole discretion, waive the requirement for its issuance of the Notice of Satisfaction described in this Section 5.3 by providing written notice to the Project Sponsor.

5.3.2 The Project Sponsor assumes all risk of loss during construction, and shall not receive final credit for the In-Kind Improvements until the Date of Satisfaction.

5.4 **Security.** If the Planning Director has not issued the Notice of Satisfaction (or waived the requirement for the Notice of Satisfaction) under Section 5.3 prior to issuance of the first certificate of occupancy for Building A, including any temporary certificate of occupancy, the Project Sponsor shall provide a letter of credit, surety bond, escrow account, or other security reasonably satisfactory to the Planning Director in the amount of one hundred percent (100%) of the Cost Documentation applicable to the uncompleted In-Kind Improvements (the "**Security**") to be held by the City until issuance of the Notice of Satisfaction, at which date it shall be returned to the Project Sponsor. If the Project Sponsor is required to post a bond for the Project with the Department of Public Works under the Subdivision Map Act or as a street improvement bond and that security covers the In-Kind Improvements to be provided under this Agreement, the Subdivision Map Act bond or street improvement bond may be substituted for the Security required by this Section 5.4 and the Project Sponsor is not required to provide additional Security for the In-Kind Improvements.

5.5 Notwithstanding anything in this Agreement to the contrary:

5.5.1 On and after the Effective Date, for so long as this Agreement remains in effect and the Project Sponsor is not in breach of this Agreement, the City's Planning Department will not request that DBI withhold the issuance of any additional building or other permits necessary for Building A or any other portion of the Project solely due to the Project Sponsor's payment of less than the full Project Fee amount in anticipation of the In-Kind Improvements ultimately being accepted and credited against the Project Fee under the terms and conditions set forth in this Agreement.

5.5.2 The City's Planning Department will request that DBI not issue or renew any further certificates of occupancy for Building A until the City receives payment of the full Project Fee (in some combination of the acceptance of In-Kind Improvements having the value described under this Agreement, receipt of the Security, and/or the acceptance of other cash payments received by the City directly from Project Sponsor) before issuance of the first certificate of occupancy for Building A, including any temporary certificate of occupancy.

5.5.3 The City's issuance of a certificate of final completion or any other permit or approval for Building A shall not release the Project Sponsor of its obligation to pay the full

Project Fee (with interest, if applicable), if such payment has not been made at the time the City issues such certificate of final completion.

5.5.4 If the In-Kind Improvements for any reason prove to be insufficient to provide payment for sums due from the Project Sponsor as and when required under this Agreement, and the Project Sponsor fails to pay such amount within thirty (30) days following notice by the City, DBI may institute lien proceedings to recover the amount of the Project Fee due plus interest pursuant to Section 408 of the Planning Code and Section 107.13.15 of the Building Code.

5.5.5 The Project Sponsor understands and agrees that any payments to be credited against the Project Fee shall be subject to the provisions set forth in San Francisco Administrative Code Sections 6.80-6.83 relating to false claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, a party who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A party who submits a false claim shall also be liable to the City for the cost of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to $10,000 for each false claim. A party will be deemed to have submitted a false claim to the City if the party: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim approved by the City; (c) conspires to defraud the City by getting a false claim allowed by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. The Project Sponsor shall include this provision in all contracts and subcontracts relating to the In-Kind Improvements, and shall take all necessary and appropriate steps to verify the accuracy of all payments made to any such contractors and subcontractors.

ARTICLE 6
OPERATIONS, MAINTENANCE AND LIABILITY

6.1 **Operations, Maintenance and Liability Responsibility.** In consideration for the Project Fee waiver pursuant to this Agreement, Project Sponsor, on behalf of itself and all future fee owners of the Land, has agreed to operate the In-Kind Improvements, and assume full maintenance responsibility for the In-Kind Improvements contemplated in this Agreement and liability relating to construction and maintenance of the In-Kind Improvements for the life of the Project after the Date of Satisfaction. Project Sponsor acknowledges that the City shall bear no operations or maintenance responsibility or liability for the construction or maintenance of such In-Kind Improvements and their operation. Project Sponsor shall obtain all permits and approvals from other affected departments that are necessary to implement this proposal, and shall abide by any conditions associated with such permits including the posting and maintenance of insurance and security. The City would not be willing to enter into this Agreement without this provision and the Project Sponsor's acceptance of all operations and maintenance responsibility and liability relating to construction, maintenance and operation of the In-Kind Improvements in accordance with this Article is a condition of the Planning Commission's approval of the terms of this Agreement.

6.2 **Contracts for Maintenance.** The City and the Planning Commission acknowledge that the Project Sponsor may hire third parties to perform Project Sponsor's maintenance obligations with respect to the In-Kind Improvements. Notwithstanding Project Sponsor's use of third parties to perform such maintenance obligations, Project Sponsor shall have full responsibility at all times to perform such maintenance obligations to the standards required in the Easement.

ARTICLE 7
NOTICES

Except as may otherwise be mutually agreed upon by the parties in writing, all notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, addressed as follows:

CITY:

Director of Planning
City and County of San Francisco
1660 Mission St.
San Francisco, CA 94103

with a copy to:

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

PROJECT SPONSOR:

c/o Strada Investment Group
101 Mission Street
Suite 420
San Francisco, CA 94105
Attn: Michael Cohen

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

ARTICLE 8
DEVELOPMENT AGREEMENT; TERM

This Agreement is being made as part of the Development Agreement, and shall remain in effect for so long as the Development Agreement remains in effect (subject to any provisions that, by their terms, survive expiration or termination).

ARTICLE 9
ADDITIONAL TERMS

9.1 This Agreement contemplates the construction and maintenance of In-Kind Improvements as authorized under Article 4 of the Planning Code and is not intended to be a

public works contract; provided, however, that Project Sponsor shall pay prevailing wages as set forth in Section 10.1 on the In-Kind Improvements.

9.2 The City shall have the right, during normal business hours and upon reasonable notice, to review all books and records of the Project Sponsor pertaining to the costs and expenses of providing the In-Kind Improvements.

9.3 This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9.4 This Agreement may be effectively amended, changed, modified, altered or terminated only by written instrument executed by the parties hereto except that the Project Sponsor may terminate this Agreement by written notice to the City at any time prior to issuance of the Building A's First Construction Document, in which event the Project Sponsor shall have no obligations or liabilities under this Agreement and the City would have no obligation to issue such First Construction Document unless and until this Agreement is reinstated, another agreement is executed by the parties, or the Project Sponsor's obligations under Article 4 of the Planning Code are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion.

9.5 No failure by the City to insist upon the strict performance of any obligation of Project Sponsor under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of payments during the continuance of any such breach, shall constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition. Any waiver must be in writing, and shall be limited to the terms or matters contained in such writing. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. In the event of any breach of this Agreement by the Project Sponsor, the City shall have all rights and remedies available at law or in equity.

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

9.7 The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. Time is of the essence in all matters relating to this Agreement.

9.8 This Agreement does not create a partnership or joint venture between the City and the Project Sponsor as to any activity conducted by the Project Sponsor relating to this Agreement or otherwise. The Project Sponsor is not a state or governmental actor with respect to any activity conducted by the Project Sponsor hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by the Project Sponsor. This Agreement does not create any rights in or for any member of the public, and there are no third party beneficiaries.

9.9 Notwithstanding anything to the contrary contained in this Agreement, the Project Sponsor acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Planning Commission adopts a resolution

approving this Agreement, and it has been duly executed by the Director of Planning and approved as to form by City Attorney.

9.10 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City harmless from and against any and all claims, demands, losses, liabilities, damages, injuries, penalties, lawsuits and other proceedings, judgments and awards and costs by or in favor of a third party, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, or loss of or damage to property occurring in, on or about the site of the In-Kind Improvements during their construction, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Project Sponsor under this Agreement, or the Easement, (d) the construction of the In-Kind Improvements constructed by or on behalf of the Project Sponsor; and (e) any acts, omissions or negligence of the Project Sponsor or its agents under this Agreement or the Easement. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigation. The Project Sponsor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Project Sponsor by City and continues at all times thereafter. The Project Sponsor's obligations under this Section shall survive the expiration or sooner termination of this Agreement.

ARTICLE 10
CITY CONTRACTING PROVISIONS

10.1 The Project Sponsor agrees that any person performing labor in the construction of the In-Kind Improvements shall be paid not less than the Prevailing Rate of Wage (as defined in San Francisco Administrative Code Section 6.1) consistent with the requirements of Section 6.22(e) of the San Francisco Administrative Code, and 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 County. The Project Sponsor shall include, in any contract for construction of such In-Kind Improvements, 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. The Project Sponsor shall require any contractor to maintain, and shall deliver to the City upon request, weekly certified payroll reports with respect to all persons performing labor in the construction of the In-Kind Improvements. The requirements of this Section only apply to the In-Kind Improvements, and the payment of Prevailing Wages for the remainder of the Project shall not be required except as set forth in the Development Agreement.

10.2 The Project Sponsor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't 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. The Project Sponsor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

10.3 In the performance of this Agreement, the Project Sponsor covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or any City employee working with or applicant for employment with the Project Sponsor, in any of the Project Sponsor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges,

services, or membership in all business, social, or other establishments or organizations operated by the Project Sponsor.

10.4 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term, the Project Sponsor shall immediately notify the City.

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

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

10.7 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.

10.8 Developer shall comply with the Workforce Agreement in the construction of the In-Kind Improvements.

NOW THEREFORE, the parties hereto have executed this In-Kind Agreement as of the date set forth above.

CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Planning Commission

By:_____
Director of Planning

STRADA BRADY LLC,
a California limited liability company

By:_____
Name:
Title:

APPROVED:

DENNIS J. HERRERA
City Attorney

By:_____
Charles Sullivan, Deputy City Attorney

ACKNOWLEDGED:

Department of Building Inspection

By:_____
Authorized Representative

ACKNOWLEDGED:

Department of Public Works

By:_____
Authorized Representative

Exhibit A to In-Kind Agreement

The Land

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

Block 3505/Lot 031

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF COLTON STREET, DISTANT THEREON 50 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BRADY STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF COLTON STREET 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

Assessor's Lot 031; Block 3505

Block 3505/Lot 031A

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF BRADY STREET AND THE NORTHWESTERLY LINE OF COLTON STREET; RUNNING THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE OF BRADY STREET 50 FEET; THENCE AT A RIGHT NORTHEASTERLY 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 50 FEET TO THE SAID NORTHWESTERLY LINE OF COLTON STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF COLTON STREET 50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

Assessor's Lot 031A; Block 3505

Block 3505/Lot 035

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF BRADY STREET, DISTANT THEREON 50 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF COLTON STREET; AND RUNNING THENCE NORTHWESTERLY ALONG THE SAID NORTHEASTERLY LINE OF BRADY STREET 50 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 179 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 100 FEET TO THE NORTHWESTERLY LINE OF COLTON STREET; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF COLTON STREET 9 FEET 6 INCHES; THENCE AT A RIGHT ANGLE NORTHWESTERLY 80 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 70 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 30 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 100 FEET TO THE NORTHEASTERLY LINE OF BRADY STREET AND THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

Assessor's Lot 035; Block 3505

Exhibit B to In-Kind Agreement

In-Kind Improvements Description

An image of the improvements is contained on the next page.

Exhibit C to In-Kind Agreement

Calculation of Market and Octavia Community Improvement Impact Fee

Type of Space	**Amount of Space**	**Fee Gross Per Square Foot**	**Total Fee**
Residential	_____ gross square feet	$_____	$_____
Non-residential	_____ gross square feet	$_____	$_____
TOTAL			$_____

Exhibit D to In-Kind Agreement

Cost Documentation

The calculation of In-Kind Value for the proposed Joseph P. Mazzola Gardens has multiple components. These include:

- Determining the value of required improvements
- Determining the value of the proposed improvements
- Determining the specific improvements that would be provided via this In-Kind Agreement
- Determining the specific improvements that would need to be provided via a gift to the City

Determining the Value of Proposed Improvements

To help determine the value of the proposed In-Kind Improvements, the Project Sponsor provided two cost estimates of the hard costs and appraisal of the Land on which the In-Kind Improvements will be located. The lower cost estimate was utilized by the Project Sponsor in calculating the overall value of the proposed improvements, including other costs such as design and engineering fees, site preparation, and hazardous remediation. This estimate concluded that the overall cost of the improvements was **$1,120,568**.

Table 2 – Cost of Joseph P. Mazzola Gardens Improvements

Design Costs	$101,870.00
Site Demolition	$25,995.00
Waterproofing	$138,640.00
Structures and Finishes	$94,740.00
Underground Utilities and Grading of Dirt	$160,688.00
Landscape, Hardscape and Furniture	$598,635.00
TOTAL COSTS	**$ 1,120,568.00**
Land Value	$7,500,000.00
TOTAL VALUE	**$8,620,568.00**

Determining the Specific Improvements that Would be Provided via this In-Kind Agreement

The approval of this In-Kind Agreement would commit the Project Sponsor to creating a privately owned publicly accessible park on a portion of the Land. Through this In-Kind Agreement the Project Sponsor would commit to $4,627,664 of value in land and improvements in lieu of its Market and Octavia Community Improvements Impact Fee of the same amount.

Determining the specific improvements that would need to be provided via a gift to the City

The value of the proposed In-Kind Improvements ($8,620,568) exceeds the Project Sponsors requested fee waiver ($4,627,664) by $3,992,922. The Project Sponsor is proposing to gift the

City the value of these improvements, and to make a gift of operating and maintaining the Gardens for the life of the project. Such a gift would occur via a separate legal agreement with the City if Project Sponsor requests such an agreement.

Exhibit E to In-Kind Agreement

RECORDING REQUESTED BY:
City and County of San Francisco
Director of Property
25 Van Ness Avenue, Suite 400
San Francisco CA 94108

AND WHEN RECORDED MAIL TO:

City and County of San Francisco
Director of Property
25 Van Ness Avenue, Suite 400
San Francisco CA 94108

APN: Block 3505, Lots [029, 031, 031A, 035] (Space Above For Recorder's Use)

EASEMENT AGREEMENT
(Publicly Accessible Open Space Easement)

[insert street address for Building A]

This Easement Agreement ("***Agreement***") is made by and between STRADA BRADY LLC, a California limited liability company ("***Grantor***"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("***Grantee***" or "***City***"), with reference to the following facts:

A. Grantor is the ground lessee of that certain real property situated in the City and County of San Francisco, State of California, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "***Burdened Property***"). [*Burdened Property = land on which Building A will be built; include street address*] The Burdened Property is owned in fee by U.A. Local 38 Pension Trust Fund.

B. Pursuant to the Planned Unit Development-Conditional Use Authorization issued by the Planning Commission on October 19, 2017, and the development agreement between Grantor and City and amendments to the Planning Code, Zoning Map, and General Plan adopted by the Board of Supervisors on December ___, 2017 (collectively, the "***Approvals***"), Grantor is redeveloping the Burdened Property and adjacent land as a large mixed-use development including residential units, a replacement union facility, ground-floor retail/restaurant uses, a sub-grade garage, and common open space for residential uses (the "***Project***"). As part of the Project, and for good and valuable consideration, Grantor built certain improvements to create publicly-accessible open space on the land described in **Exhibit B** (the "***Easement Area***"), and agreed to maintain the improvements, in accordance with the development agreement and the in-

kind agreement under San Francisco Planning Code Section 421.3 of the Planning Code. The improvements are more particularly described and depicted on **Exhibit C** (the "***Improvements***").

C. Grantor desires to grant to Grantee a nonexclusive easement over the Easement Area for the use, enjoyment and benefit of the public for open space and recreation purposes as set forth in this Agreement (the "***Publicly Accessible Open Space Easement***"), and Grantee desires to accept the Publicly Accessible Open Space Easement from Grantor.

NOW, THEREFORE, for valuable consideration, the receipt of which each of the parties hereto does hereby acknowledge, the parties hereto do hereby agree as follows:

1. Grant of Easement. Subject to the provisions of this Agreement, Grantor hereby grants to Grantee the Publicly Accessible Open Space Easement in, on and over the Easement Area for the use, enjoyment and benefit of the public for open space and recreation purposes. Except as expressly set forth in this Agreement, Grantor retains all rights in the Easement Area and retains the right to permit or perform any act not inconsistent with the Publicly Accessible Open Space Easement, including but not limited to: (a) the right to otherwise transfer the Easement Area to anyone Grantor chooses, subject to Grantee's rights under this Agreement, so long as Grantor simultaneously transfers its interest in the Burdened Property to the same person or entity; (b) the right to grant additional easements in, and to encumber, the Easement Area, subject to Grantee's rights under this Agreement; (c) the right to bring and defend actions relating to the Easement Area, including the right to defend any eminent domain action; (d) the right to make repairs and modifications to the Easement Area consistent with this Agreement; (e) the right to remove and dispose of, in any lawful manner, any object or thing left in or on the Easement Area; and (f) the right to develop and enforce reasonable rules and regulations governing security, use, dress, and conduct with respect to the Easement Area by the public consistent with other privately-owned public open spaces in San Francisco (the "***Rules***"), provided that the Rules are enforced in a nondiscriminatory manner.

2. Obligation to Maintain Improvements; City Approval of Material Changes. Grantor shall operate, repair and maintain the Improvements in good condition, at no cost to City, consistent with other privately owned publicly accessible open spaces in San Francisco. Notwithstanding the foregoing, Grantor shall have the right to modify, renovate, replace, and update the Improvements, provided that any material modification to the Improvements that could limit or materially adversely affect public access or use of the Easement Area (collectively, "***Material Changes***") will be subject to the prior review and approval of the City's Director of Planning or his or her designee, which approval shall not be unreasonably withheld or delayed so long as it does not impede or materially adversely affect public access or use. Grantor shall provide not less than sixty (60) days' notice of any proposed Material Changes, and shall meet and confer with the Director of Planning upon request to ensure that the proposed Material Changes do not impede or materially adversely affect public access or use. If the Director of Planning fails to respond to an initial request for approval within sixty (60) days, Grantor shall send a second notice of the request, with a statement that failure to respond within twenty (20) days to the second notice will result in a deemed approval of the proposed Material Changes. The Director of Planning's failure to respond to the second notice within twenty (20) days following receipt shall be deemed a City approval of the Material Changes described in the notices.

3. Permitted Uses. The only permitted uses of the Easement Area shall be for (a) passive recreation involving no athletic equipment or fixtures, (b) quiet contemplation and rest, without

the use of audible electronic devices (although headphones are permitted), and (c) similar uses approved by Grantor. Prohibited uses include (i) smoking of any form, including cigarettes, cigars, pipes, e-cigarettes, and smokeless cigarettes, and of any substance (including tobacco and marijuana), (ii) consumption or possession of alcoholic beverages, (iii) disorderly conduct, as defined in Article 4 of the City's Park Code, as amended from time to time, (iv) building fires or cooking, except in any designated BBQ areas, and (v) graffiti, littering and the destruction of property. Grantor may prohibit off-leash dogs and other animals in designated areas, but shall permit service animals. Grantor may also prohibit all illegal uses, as well as peddling, panhandling, solicitation, sleeping, or nuisance activities as permitted by law. No trailer, tent, shack, or other outbuilding, or temporary structure shall be permitted, provided Grantor may approve the use of temporary tents, booths, art installations, temporary displays, and other structures in connection with public events, temporary exhibitions, or special events.

4. Hours of Operation. The Easement Area shall be open and accessible to the public every day from dawn to dusk (or 30 minutes prior to sunset) (the "***Operating Hours***"), unless reduced hours are imposed on a temporary basis by Grantor as set forth below. Grantor may prohibit any person from entering or remaining in the Easement Area when it is closed to the public (subject to authorized service, safety and maintenance personnel). Grantor may close all or part of the Easement Area as follows:

a. Emergency. In the event of an emergency or danger to the public health or safety (including flood, storm, fire, earthquake, explosion, accident, criminal activity, riot, civil disturbances, civil unrest, or unlawful assembly), Grantor may temporarily close all or part of the Easement Area as needed for public safety, security and the protection of persons and property;

b. Maintenance and Repairs. Grantor may temporarily close such portions of the Easement Area as needed to make repairs or perform maintenance. Grantor shall post notices a minimum of 72 hours before a planned closure for maintenance and repairs.

c. Special Events. Grantor may close all or part of the Easement Area for special events, but not more than eight (8) single day (between 9am and 6pm) events per calendar year. Any daytime closures in excess of 8 single day events per calendar year shall require the prior consent of the City's Planning Director.

d. Extended Closure. If Grantor seeks any closure in excess of one week, Grantor shall notify the City's Planning Director to determine if the extended closure is warranted or would constitute a violation of required public access.

Grantor shall have the right to block entrances and prevent the entry of persons, animals or vehicles during the time periods when public access to the Easement Area is restricted. Grantor shall keep a record of all closures of the Easement Area for a period of not less than 2 years, and shall provide a copy of such record to the Planning Director on request.

5. Signs. Grantor may post signs at the public entrances to the Easement Area, setting forth hours of operation, a telephone number to call regarding security, management or other inquiries, the applicable regulations imposed by this Agreement and the Rules, if any (the "***Posted Signs***").

Use of the Easement Area by the public shall be subject at all times to this Agreement, the Rules, and the Posted Signs. Grantor shall have the right to post and erect promotional signage with respect to any special events in the Easement Area, or other signs as permitted by applicable law.

6. Term of Easement. This Agreement shall be effective on the date of recordation and shall continue for the life of the building on the Burdened Property. Upon the demolition or destruction of the building, Grantee agrees, upon Grantor's request, to record a termination of this Agreement. In addition, Grantee may at its discretion terminate this Agreement at any time as to all or any portion of the Burdened Property.

7. Removal of Persons. Grantor may install and operate security devices, and maintain security personnel in and around the Easement Area, at any time. Grantor shall have the right, but not the obligation, to use lawful means to effect the arrest or removal of any person or persons who creates a public nuisance, who otherwise violates the Rules, or who commits any crime in or around the Easement Area. To the extent permitted by law, Grantor may prohibit members of the public who have repeatedly broken the Rules in the past, from entering the Easement Area, and if such person has entered the Easement Area, may ask such person to leave the Easement Area. Grantee shall have the right to exercise its police power and authority consistent with other publicly accessible areas of the City. Grantor shall not discriminate against, or segregate, any person, or group of persons, on account of race, color, religion, creed, national origin, gender, ancestry, sex, sexual orientation, age, disability, medical condition, marital status, or acquired immune deficiency syndrome, acquired or perceived, or other category prohibited by applicable law, in the use, operation or enjoyment of the Easement Area.

8. As-Is. Grantee accepts the Easement Area strictly in its "***as is***" physical condition, except as otherwise specifically provided herein. Grantor may inform the public that its use of the Easement Area shall be at its own risk. Grantor makes no representations or warranties to Grantee or the public under this Agreement regarding the existing physical condition of the Easement Area.

9. Enforcement. Grantee, but not the general public, shall have all rights and remedies available at law or in equity in order to enforce this Agreement, including injunctive relief to restrain prohibited activities. All rights and remedies shall be cumulative, and invocation of any such right or remedy shall not constitute a waiver or election of other remedies.

10. Notice and Cure Rights. Grantee shall provide written notice to Grantor of any actual or alleged violation of this Agreement. Such notices shall be given to Grantor at the address last furnished to Grantee. Grantor shall have a period of thirty (30) days after receipt of such notice to cure such violation; provided, if the violation is not cured within such 30-day period, Grantor shall have such additional time as shall be reasonably required to complete a cure so long as Grantor promptly undertakes action to commence the cure within the 30-day period and thereafter diligently prosecutes the same to completion.

11. Lender Notice and Cure Rights.

(a) So long as any deed of trust encumbering the Burdened Property and the Easement Area made in good faith and for value (each, an "***Encumbrance***") shall remain

unsatisfied of record, the City shall give to the beneficiary of such Encumbrance (each, a "***Lender***") a copy of each notice the City gives to Grantor from time to time of the occurrence of a violation under this Agreement, provided that such Lender has given to the City a written request for notice. Copies of such notices shall be given to Lenders at the address last furnished to the City.

(b) Each Lender shall have the right, but not the obligation, to do any act or thing required of Grantor hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof; provided, however, that no such action shall constitute an assumption by such Lender of the obligations of Grantor under this Agreement. In the case of any notice of violation given by the City to Grantor, the Lender shall have the same concurrent cure periods as are given Grantor under this Agreement for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days (or such longer period as reasonably necessary so long as Lender commences cure within such thirty (30) day period and diligently proceeds to completion), and the City shall accept such performance by or at the instance of the Lender as if the same had been made by Grantor.

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

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

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

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

15. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by Grantor (or its successors) and Grantee.

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

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the sane agreement.

18. References; Titles. Wherever in this Agreement the context requires, reference to the singular shall be deemed to include the plural. Titles of sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

19. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given.

GRANTOR: STRADA BRADY LLC
c/o Strada Investment Group
101 Mission Street
Suite 420
San Francisco, California 94105
Attention: Michael Cohen

GRANTEE: City and County of San Francisco
[*insert Planning Director address*]

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

20. Successors; Run with the Land. This Agreement shall be binding upon and inure to the benefit of the parties hereto and any successor owners of the building on the Burdened Property. Grantor may transfer obligations to a residential, commercial or other management association, but shall remain ultimately responsible for Grantor's rights and obligations under this Agreement. The City, as Grantee, may not transfer its rights under this Agreement without Grantor's consent. The rights and obligations of Grantor hereunder shall run in favor of and burden any successor owner of the building upon the Burdened Property. The provisions of this

Agreement are for the exclusive benefit of Grantor and Grantee, and not for the benefit of nor to give rise to any claim or cause of action by any other person; and this Agreement shall not be deemed to have conferred any rights upon any person except Grantor (and its successors) and Grantee. Notwithstanding the rights provided herein, nothing herein shall be deemed a dedication of any portion of the Burdened Property to the general public.

21. Representations and Warranties.

(a) Good Standing. Grantor hereby represents, warrants and covenants that Grantor is a limited liability company duly incorporated, validly existing and in good standing under the laws of the State of California. Grantee hereby represents, warrants and covenants that Grantee is a charter city and county duly incorporated, validly existing and in good standing under the laws of the State of California.

(b) Authority. Grantor hereby represents, warrants and covenants that Grantor has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it, and that this Agreement has been duly authorized by all necessary action on the part of Grantor and no other action on the part of Grantor is necessary to authorize the execution and delivery of this Agreement. Grantee hereby represents, warrants and covenants that Grantee has full power and authority to enter into this Agreement and to consummate the transactions contemplated by it, and that this Agreement has been duly authorized by all necessary action on the part of Grantee and no other action on the part of Grantee is necessary to authorize the execution and delivery of this Agreement.

22. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provisions to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

23. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the easements which are the subject matter of this Agreement.

24. Compliance With Laws. Grantor, at no expense to Grantee, shall comply with all laws, statutes, ordinances, rules, and regulations of federal, state and local authorities (including, without limitation, City laws of general applicability) having jurisdiction over the Burdened Property, now in force or hereafter adopted (collectively, "Laws"), with respect to its use of the Burdened Property.

25. Survival. All representations, warranties, waivers, and indemnities given or made hereunder shall survive termination of this Agreement.

26. Notices Concerning Use. Grantor reserves the right to record, post and publish notices as referred to in Section 813, 1008 and 1009 of the California Civil Code; provided, that such notices shall not affect the rights and obligations of Grantor and Grantee hereunder and, where appropriate, any such notice shall include recognition of the provisions of this Agreement.

[*Remainder of Page Intentionally Left Blank; Signatures Follow*]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on _____, 20__.

CITY AND COUNTY OF SAN FRANCISCO,
a charter city and county

By: _____
John Rahaim, Director of Planning

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

STRADA BRADY LLC
a California limited liability company

By: _____
Name: _____
Title: _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

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

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by this Easement Agreement dated _____, from Grantor to the City and County of San Francisco, a municipal corporation, is hereby accepted by order of its [Board of Supervisors Resolution No. _____, adopted on _____, 20__, and Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike, Director of Property

Exhibit D

Affordable Housing Program

The Project will provide significantly more affordable housing benefits than are required under the Market Octavia Plan and the Residential Hotel Ordinance by building supportive housing for formerly homeless individuals and providing on-site inclusionary affordable units, all as more specifically set forth below. Overall, the Project will achieve twenty-six to twenty-eight percent (26-28%) affordability by means of the approximately 100 affordable units in the Colton Street Affordable Housing Building and by ensuring that twelve percent (12%) of the units located in Buildings A-D are affordable to residents at or below 100% AMI. As a non-profit service provider for formerly homeless populations, the Community Housing Partnership will operate the Colton Street Affordable Housing Building to serve residents with incomes of approximately 20% of area median income. For Low Income Housing Tax Credit Financing purposes, these units will be income-restricted so as not to exceed 60% of area median income. The Project will be phased such that the Colton Street Affordable Housing Building will be constructed before Building C (the current Civic Center Hotel) in order to avoid offsite displacement of any of the Tenants (as defined below in this Exhibit D) of the Civic Center Hotel who will have the right to move directly from their existing unit in the Civic Center Hotel to the new Colton Street Affordable Housing Building. Developer agrees to provide all of the affordable housing as on-site units as described below, and waives any right to construct affordable housing units offsite or to pay any in lieu fee under Planning Code section 415 et seq.

A. Colton Street Affordable Housing Building

1. Project Description. The Colton Street Affordable Housing Building will contain approximately 100 but not less than 95 Affordable Supportive Housing Units (the "**Colton Street Units**") in a 68-foot tall residential building. As a non-profit service provider for formerly homeless people, the Community Housing Partnership will operate the Colton Street Affordable Housing Building to serve residents with incomes of approximately 20% of area median income. For Low Income Housing Tax Credit Financing purposes, these units will be income-restricted for the life of the Project, so as not to exceed 60% of AMI. Developer shall record affordability restrictions against the Colton Street Units in a form approved by MOHCD before occupancy. The MOHCD income restrictions will require that the units be reserved for formerly homeless households, including households exiting other supportive housing buildings, as long as sufficient Local Operating Subsidy Program ("**LOSP**") funds remain available but in no event beyond the life of the Project.

2. Developer Gap Financing. Developer will enter into a joint venture with CHP to build the Colton Street Affordable Housing Building, will structure equity and debt financing for construction, will transfer the Colton Street Parcel and its interest in the development venture to CHP upon completion of the Colton Street Affordable Housing Building, and will fund all predevelopment costs and gap financing required to complete the Colton Street Affordable Housing Building and to move all Tenants to the Colton Street Units. Developer, in conjunction with CHP, will seek Low Income Housing tax credits and tax-exempt bond financing for construction, as well as other available federal and state resources for

affordable housing, provided the failure to obtain any such funding shall not decrease Developer's affordable housing or other obligations under this Agreement.

3. Project Phasing and Delivery of Colton Street Affordable Housing Building. The Project will be phased such that the Colton Street Affordable Housing Building will be completed and Tenants of the Civic Center Hotel shall be offered the opportunity to relocate to the Colton Street Affordable Housing Building at no cost to the Tenants, in order to avoid any offsite displacement of any Tenants as a result of the Project. All Tenants who want to be relocated shall be relocated in accordance with a relocation plan substantially in the form of Exhibit D-1. No major renovation or demolition permit for the Civic Center Hotel building (i.e., Building C) will be issued by the City until a temporary certificate of occupancy has been issued for the Colton Street Units and the Tenants have been relocated in accordance with this Agreement. As used in this Exhibit D, the term "**Tenant**" shall mean a tenant occupying a unit in the Civic Center Hotel, pursuant to a valid, written lease, as of the date on which the first temporary certificate of occupancy has been issued for units in the Colton Street Affordable Housing Building (the "**Colton Street Building Completion Date**") and who is not in default under such lease beyond applicable notice and cure periods as of the Colton Street Building Completion Date. The term "Tenant" shall not include any subtenant, licensee, guest, or invitee of any Tenant, but shall only include a tenant in occupancy that is a party to rental agreement with the Civic Center Hotel (or an authorized agent thereof) and any family members recognized as part of that tenancy consistent with the Rent Ordinance. From the Effective Date to the Colton Street Building Completion Date, Developer shall not evict any tenant in the Civic Center Hotel except for "just cause" under Section 37.9 of the San Francisco Rent Ordinance.

4. Relocation. Any Tenant that chooses to permanently vacate the Civic Center Hotel and not move to the assigned Colton Street Unit shall be entitled to relocation benefits as described in the attached relocation plan. Developer shall make any such payment and provide benefits as required under Section 37.9C, and shall indemnify the City against any and all claims resulting from this Agreement or the failure to satisfy the requirements of Section 37.9C or any relocation law to the extent applicable.

5. Compliance with Residential Hotel Ordinance. The Project will equal or exceed the Residential Hotel Ordinance's replacement requirements by providing, in the Colton Street Affordable Housing Building, deed-restricted, supportive housing at a ratio that exceeds the requirements of the Residential Hotel Ordinance. The Project will exceed the one-for-one comparable unit replacement requirements of Residential Hotel Ordinance section 41.13 by delivering approximately 100 (but not less than 95) Affordable Supportive Housing Units in the Colton Street Affordable Housing Building to replace the Residential Hotel Units, and moving all of the Tenants into the new Colton Street Units if they desire. In approving this Agreement, the City has determined that the substantive comparable unit replacement unit criteria of Residential Hotel Ordinance section 41.13 are satisfied by this Agreement. Because the Colton Street Units will have affordability restrictions recorded against them before occupancy pursuant to section A.1 above, the Colton Street Units will not be required to remain subject to the provisions of the Residential Hotel Ordinance, as would otherwise be required by Residential Hotel Ordinance section 41.13(c) but will be subject to the requirements of Administrative Code Chapter 37 (Residential Rent Stabilization and Arbitration Ordinance). The City further agrees that the reporting and monitoring provisions of Residential Hotel Ordinance Sections 41.9-41.11

are not relevant for the Colton Street Units and are therefore superseded by this Agreement. The City further agrees that Developer has satisfied the requirements to obtain a Permit to Convert under the Residential Hotel Ordinance and/or the Residential Hotel Units will be subject to appropriate alternative requirements under Administrative Code Chapter 37 and this Exhibit D, and therefore no separate permit is required in this instance.

B. On-Site BMR Housing.

1. Number of BMR Units. Not less than twelve percent (12%) of the units located in each of Buildings A-D (approximately 57 units) shall consist of workforce BMR units affordable to households earning up to 100% AMI (the "**BMR Units**"). The rental and re-rental of the BMR Units shall comply with the lottery preferences and other provisions utilized by MOHCD under the Mayor's Office of Housing and Community Development Housing Preferences and Lottery Procedures Manual, and the reporting and monitoring requirements of the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual, each as published by MOHCD and as each may be updated from time to time, to the extent permitted by law. Developer shall record affordability restrictions that remain in effect for the life of the Project against each of the BMR Units, approved by MOHCD, before occupancy of the applicable units.

2. Compliance with Planning Code Section 415. The Parties shall implement the affordable housing requirements in accordance with the provisions of Planning Code section 415 and the San Francisco Affordable Housing Monitoring Procedures Manual, as published by the Mayor's Office of Housing and as updated from time to time, except for any provisions, updates or changes that conflict with the requirements of this Agreement. The following changes shall be deemed to conflict with this Agreement and therefore shall not apply to the Project: (i) any increase in the required number or percentage of affordable housing units beyond what is required by this Agreement; and (ii) any change in the minimum or maximum AMI percentage levels for the affordable housing pricing or income eligibility.

3. Location and Comparability. The BMR Units shall be intermixed and dispersed throughout each building in locations approved by MOHCD in accordance with customary practice, and will be generally indistinguishable in appearance from the market rate units in that building. The BMR Units and the market rate units in the same building with the same household size shall be substantially similar in size, type, amenities and overall quality of construction. All BMR Units will be wired for telephone, cable, and internet access, together with, if applicable, any new technology installed by the Developer in market rate units. Except as expressly set forth in this Agreement to the contrary, the location, design, size and other requirements of the BMR Units must comply with Zoning Administrator Bulletin No. 10 as updated from time to time.

4. Civic Center Hotel and Colton Street Building.

(a) Continuation of Navigation Center Use. Until the later of (i) the completion of the Colton Street Affordable Housing Building or (ii) the transfer of the Transfer Property (as more specifically set forth in this Section 4 below), Developer shall allow the Civic Center Hotel to continue to be operated as a navigation center consistent with current operations and on

substantially the same terms as are set forth in that certain Lease, dated November 2, 2015, between U.A. Local Pension Trust Fund, as "Lessor", and CHP Civic Center LLC, as "Lessee".

(b) Failure to Construct Colton Street Affordable Housing Building. If Developer has not obtained a final certificate of occupancy for the Colton Street Affordable Housing Building on or before the date that is fourteen (14) years after the Effective Date (as such 14-year date may be extended for any applicable Excusable Delay, the "**CSAHB Completion Date**") and any other Building under this Agreement has commenced or been completed, then the City shall have the right to assume, and Developer agrees to assign to the City, all of Developer's rights, obligations and interests under the ground leases for the Civic Center Hotel site (the "**CCH Property**") and the Colton Street Parcel (together with the CCH Property, the "**Transfer Property**"), pursuant to the form of ground leasehold interest assignment and assumption agreement for each property (each an "**Assignment Agreement**") attached hereto at Exhibit D-2; provided, notwithstanding anything to the contrary in the ground leases, the City shall not be required to pay more than $55,000 per year in rent for the CCH Property and more than $1 per year in rent for the Colton Street Parcel. If Developer fails to obtain a final certificate of occupancy for the Colton Street Affordable Housing Building on or before the CSAHB Completion Date, Developer shall notify the Director of Property and the Director of the Mayor's Office of Housing and Community Development (the "**Housing Director**") of such fact in writing and then, for a period of 180 days after receipt of such notice, the City may exercise its rights under this Section 4 by giving Developer written notice of the City's request to enter into the Assignment Agreements (the "**Assignment Notice**").

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

(d) Subordination; Condition of Title. The rights of any Mortgagee secured by a Mortgage that encumbers all or part of the Transfer Property (but not including the ground lease landlords) shall be subordinate to the City's rights under this Section 4. The City accepts the condition of the Transfer Properties' title as set forth in the title reports for each property attached hereto at Exhibit D-3. Developer shall remove, before transfer under the Assignment and Assumption Agreement, all monetary liens and any other liens and any encumbrances that would materially impair or limit the City's ability to operate the Civic Center Hotel as a navigation center or to build new affordable housing on the Colton Street Parcel as set forth in the Approvals. Developer further agrees to deliver the Transfer Property to the City generally in the condition that such property is in on the Effective Date. Developer agrees that all contracts entered into by Developer relating to the Transfer Property shall be terminated by Developer, at no cost to City, on or before the transfer unless the City agrees to assume the same.

(e) Cooperation. Developer agrees to cooperate with the City and to take all such actions as may be needed to promptly transfer Developer's rights to the City as set forth in this Section 4. Within 15 days following the Effective Date, Developer agrees to execute, acknowledge and record the ground leasehold deeds of trust in the form of Exhibit D-4 in order to secure Developer's obligations to transfer the Transfer Properties under this Section 4. There will be no conditions or City obligations relative to the transfer other than the City's agreement

to assume Developer's rights, obligations and interests under the Ground Leases as they relate to the Colton Street Parcel or the CCH Property. The form of any other transfer documents (if any) will be subject to the reasonable approval of the Director of Property and the Housing Director, following consultation with the City Attorney's Office. By approving this Agreement, the City's Board of Supervisors authorizes the City's Director of Property and Housing Director to enter into the Assignment Agreements and any additional documents related to the transfer as contemplated above, without additional action by the Board of Supervisors, provided that the transfer documents are consistent with the terms outlined in this Section.

(f) Costs and Fees. Developer shall pay (1) all reasonable transaction costs of the City relating to the negotiation of transfer documents and the transfer of the Transfer Property, and (2) the premiums for the Title Policies (as such term is defined in Section 4(g)). Developer shall further indemnify the City for all costs and losses, including reasonable attorney's fees and costs, resulting from (i) any claim with respect to the Transfer Property relating to the period before the transfer of the Transfer Property, (ii) any contest to Developer's right to transfer the Transfer Property as contemplated by this Section, and (iii) any failure by Developer to satisfy the requirements of this Section. This indemnification shall survive the transfer of the Transfer Property.

(g) Closing. Developer shall have a period of 60 days after Developer's receipt of the Assignment Notice (the "**Closing Period**") to (i) provide to the City CLTA policies of title insurance, insuring the City's ground leasehold interests in the Transfer Property in an amount equal to the fair market value of the ground leasehold interest in Transfer Property, with only the exceptions permitted under Section 4(d) above (the "**Title Policies**"), and (ii) to execute and deliver to the City the Assignment Agreements and any other transfer documents. Within 7 days after the City's receipt of the Title Policies, the executed Assignment Agreements and any other transfer documents, the City shall execute and return one (1) fully executed original of each of the Assignment Agreements and other transfer documents to Developer.

(h) City's Remedies. If Developer fails to transfer the Transfer Property to the City in accordance with this Section 4, then the City shall have the right to specific performance to compel the transfer of the Transfer Property to the City in accordance with this Section 4; provided (i) if Developer can transfer the Colton Street Parcel but is not able to transfer the CCH Property in the condition required by this Section 4, or if the CCH Property ground lessor objects to the transfer or insists on materially adverse new conditions or rent greater than $55,000 per year (subject to market escalations as expressly provided for in the ground lease), then the City, as its sole remedy for Developer's failure to transfer the Transfer Property, shall have to right to take only the Colton Street Parcel together with a payment in the amount of Fourteen Million Nine Hundred Thousand Dollars ($14,900,000), and (ii) if Developer is not able to make payment in the amount of Fourteen Million Nine Hundred Thousand Dollars ($14,900,000) and transfer the Colton Street Parcel in the condition required by this Section 4, or if the Colton Street Parcel ground lessor objects to the transfer or insists on materially adverse new conditions or rent greater than $1 per year, then the City, as its sole remedy for Developer's failure to make the $14,900,000 payment and transfer the Colton Street Parcel, shall have the right to take neither property but instead accept an in lieu payment in the amount of Fourteen Million Nine Hundred Thousand Dollars ($14,900,000) plus the Fair Market Value (as defined in Exhibit D-4)

of the Colton Street Parcel, as determined by independent third party appraisal by an appraiser agreed to by the parties or by baseball arbitration, as set forth in Exhibit D-4, if the parties cannot agree upon one appraiser. The City's exercise of its remedy under clause (i) or (ii), as applicable, shall be by written notice to Developer, with a statement explaining the basis for the determination that the Transfer Property cannot be transferred in accordance with this Section 4 or that the Colton Street Parcel cannot be transferred in accordance with this Section 4. Any payments due under clause (i) above shall be made at the time of Developer's transfer of the Colton Street Parcel to the City and any payment due under clause (ii) above shall be made within 60 days following the determination of the fair market value of the Colton Street Parcel. Any failure to make such payment when due shall accrue interest at 10% per annum until paid.

(i) Fulfillment of Developer's Obligations. Upon the conclusion of the City's action for specific performance (or the transfer of land and payments due as set forth in Section 4(h)), the City shall have no further rights or remedies under this Agreement resulting from Developer's failure to complete the Colton Street Affordable Housing Building.

C. Costa-Hawkins Rental Housing Act

1. Non-Applicability of Costa-Hawkins Act. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code sections 1954.50 et seq. (the "**Costa-Hawkins Act**"), provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (section 1954.52(b)). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the BMR Units or the Colton Street Units. This Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because this Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 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 or the Colton Street Units as a result of the exemption set forth in California Civil Code section 1954.52(b) for the reasons specified above.

2. General Waiver. Developer, on behalf of itself and all of its successors and assigns of all or any portion of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of this Agreement related to the establishment of the BMR Units and the Colton Street Units under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, the Parties acknowledge and that they are important elements of the consideration for this Agreement and the Parties should not have the benefits of this Agreement without the burdens of this Agreement. Accordingly, if

Developer challenges the application of this covenant and waiver, then such breach will be an Event of Default and City shall have the right to terminate the Development Agreement in its entirety.

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

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

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

Exhibit D-1

Tenant Relocation Plan
[Strada Brady LLC Development Agreement]

I. Developer Holds Community Meeting

Before issuance of a Certificate of Final Completion and Occupancy ("CFCO") by the Department of Building Inspection to the Colton Street Affordable Housing Building ("Colton Street Building"), Developer shall hold at least two duly noticed informational presentations with Tenants[1] in the Civic Center Hotel building ("Civic Center Hotel") regarding this Tenant Relocation Plan. Developer shall discuss and disclose at these meetings the contents of the Tenant Relocation Plan and the site plan showing the location of the Colton Street Building, as well as an approximate schedule for the proposed relocations.

II Building Occupants Are Formally Notified of the Process by Developer

Within 90 days before the anticipated completion of construction of the Colton Street Building but not later than issuance of the CFCO as referenced in Paragraph I above, Developer shall notify all occupants in every Tenant-occupied unit in the Civic Center Hotel, by delivering by certified mail to the unit and to any other address on the operative rental agreement for that unit, with copies filed at the Rent Board and delivered to any recognized residents' association (defined as an organization with more than 10 members, that has been in existence for 24 months prior to the filing of the Initial Notice, and has notified the Developer of its existence), a written notice (the "Initial Notice") containing the following information: (a) the name of each Tenant known by Developer at such address; (b) a detailed explanation of the rights of Tenants to relocate to a comparable replacement unit in the Colton Street Building (a "Replacement Unit") in accordance with the terms of the Agreement; (c) the Tenant's original occupancy date; (d) notice that further information regarding such rights can be obtained from the Rent Board, including the Notice to Tenant under Rent Ordinance Section 37.9(c), as well as notice that any occupant can file a request for a determination of tenancy status with the Rent Board if there is a dispute as to whether or not someone qualifies as a Tenant; (e) the anticipated or confirmed completion date for the Colton Street Building and an affirmation of the date that the CFCO was thereafter issued; and (f) the anticipated relocation dates for Tenants who chose to relocate to a Replacement Unit (each, a "Relocating Tenant"). The Initial Notice shall be concurrently posted in any common areas of the Civic Center Hotel, such as laundry rooms and exterior passageways. The Initial Notice shall also request that the Tenants complete and return to Developer an attached response form within 30 days that notifies Developer of the Tenant's intention to relocate to a Replacement Unit. The purpose of such response form is solely to provide information to Developer in order to plan for and facilitate the relocation process.

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[1] As used in this Tenant Relocation Plan, "Tenant" shall have the meaning given to it in Section A.3 to Exhibit D of the Development Agreement. Any capitalized term used in this Relocation Plan that is not defined will have the meaning given to such term in the Development Agreement.

Tenant's response indicating an interest in accepting or rejecting a Replacement Unit shall be wholly non-binding, and at any point before the relocation date a Tenant may choose instead to not become a Relocating Tenant. In addition, the failure to return the response form shall have no legal effect on a Tenant's ability to later accept or reject a Replacement Unit (up to the earlier of the date such Tenant moves from the Civic Center Hotel or the Civic Center Hotel Vacancy Date (as such term is defined in Section X below). The response form shall be filed with the Rent Board by Developer within 10 days of receipt by Developer.

III. Tenant's 30-Day Period to Petition Rent Board

Within 30 days after service of the Initial Notice, any occupant or group of occupants at the Civic Center Hotel that is not considered a Tenant in the Initial Notice may petition the Rent Board for a hearing to determine whether that person or group of persons is a Tenant. The decision of the Rent Board is final, subject to a person's right to seek judicial relief to the extent permitted by law. The Rent Board Administrative Law Judge shall hear a petition as soon as possible once a petition is filed with the Rent Board.

IV. Developer Issues Replacement Unit Availability Notice

Not later than 6 months after the completion date of the Colton Street Building and the issuance of the CFCO, Developer shall deliver, via certified mailing to the unit and to any other address for the Tenant on the operative rental agreement, the Replacement Unit Availability Notice to Tenants, as well as deliver copies to the Rent Board and any recognized residents' association. This notice shall also be posted in common areas and exterior passageways of the Civic Center Hotel. This notice shall provide the following: (i) a detailed explanation of the rights of Tenants to relocate to a Replacement Unit in accordance with the terms of the Agreement, including the requirements for qualifying as a Tenant; (ii) notice that further information regarding such rights can be obtained from the Rent Board, as well as the Notice to Tenant Required by Rent Ordinance Section 37.9(c); (iii) the completion date of the Colton Street Building as well as the date that the CFCO was thereafter issued; (iv) the anticipated relocation dates for Relocating Tenants; (v) at least three dates and times when Developer will arrange for an opportunity for Tenants to visit sample Replacement Units (one of which shall be a time on Saturday between 9 am and 6 pm, Sunday between 10 am and 5 pm or on weekday evenings between 6 pm and 9 pm) provided that the first site visit offered by Developer shall be no sooner than 10 days after delivery of the Replacement Unit Availability Notice (unless an earlier date is agreed to by Developer and the Tenant) and the last site visit shall be no more than 30 days after delivery of the Replacement Unit Availability Notice; and (vi) notice that all Tenants must deliver a Replacement Unit Preference Notice (a blank form to be enclosed with the Replacement Unit Availability Notice with postage pre-paid Certified Mail return envelope) within the time prescribed. The site visit shall provide an opportunity for Tenants to visit a model Replacement Unit with completed finishes.

V. Tenant's Time Period to Submit Unit Preference Notice

Each Tenant desiring to relocate to a Replacement Unit must, within 20 days following the last of the three dates provided for the Tenant's site visit, known as the "Selection Period," deliver written notice to Developer of (a) his or her decision to relocate to a Colton Street

Building or remain in his or her Existing Unit until the Civic Center Hotel Vacancy Date (as defined in Section X below), and (b) for Tenants choosing to relocate, their selection of available Replacement Units ranked in the order of preference. Delivery of this notice by a Tenant to Developer, termed the Replacement Unit Preference Notice, shall determine which Tenants have elected to become Relocating Tenants and which remain Tenants subject to relocation payment benefits under Section 37.9C of the Rent Ordinance. Developer shall use good faith efforts to reach out to Tenants that do not respond in order to confirm that they do not wish to become a Relocating Tenant. Following the last date for delivery of the Replacement Unit Preference Notices, Developer shall begin the process of assigning Replacement Units. All Replacement Unit Preference Notices received by Developer shall be filed with the Rent Board within 10 days of receipt by Developer. Developer shall provide stamped Certified U.S. Mail envelopes to Tenants with the delivery of the Replacement Unit Preference Notice, and Tenants shall return the Unit Preference Notice to Developer by certified mailing. Developer shall also provide a location within the Civic Center Hotel, such as a building management office, to drop off the Replacement Unit Preference Notices in person.

VI. Developer's Assignment of Replacement Units

Developer shall assign a Replacement Unit to each Relocating Tenant who delivers a Replacement Unit Preference Notice before the end of the Selection Period based upon the unit preference set forth in each Replacement Unit Preference Notice. Developer shall notify each Tenant, by certified mail (with a copy to the Rent Board), of the assigned Replacement Unit. Tenants who contest their assignment to a Replacement Unit must, within 20 days of the Relocating Tenant's receipt of the Replacement Unit Notice, file a petition with the Rent Board. The Rent Board will conduct a hearing as soon as possible after the petition is filed. All decisions from the Rent Board are binding subject to any permitted judicial appellate rights.

VII. Tenant's Time to Accept Replacement Units

Within 30 days of delivery of the Replacement Unit Notice (the "Acceptance Period"), the Tenant shall send written notification of acceptance or rejection of the specified Replacement Unit to Developer. These notices shall be termed the Unit Acceptance Notice or Unit Rejection Notice, respectively. If no response is received during the Acceptance Period, Developer shall thereafter issue, by certified mailing with a copy filed with the Rent Board, a Second Replacement Unit Notice, informing the Tenant of his or her right to occupy the specified Replacement Unit. Tenants that fail to respond within 10 days after receipt of the Second Replacement Unit Notice shall permanently waive their right to a Replacement Unit, but shall be allowed to remain in the Existing Unit until the Civic Center Hotel Vacancy Date. Developer shall use reasonable efforts during this 10 day period to personally contact any such Tenant to obtain either the Unit Acceptance Notice or the Unit Rejection Notice. Developer shall provide stamped Certified U.S. Mail envelopes to Tenants with the delivery of the Unit Acceptance Notice/Unit Rejection Notice, and Tenants shall return these notices to Developer in person at a location within the Civic Center Hotel, such as a building management office, or by certified mailing. Developer shall file all returned Unit Acceptance Notices or Unit Rejection Notices with the Rent Board within 10 days following the outside date for delivery.

VIII. Developer Delivers Relocation Notice

Upon completion of construction at the Colton Street Building, Developer shall deliver written notice of completion (the "Relocation Notice") within 30 days to each Tenant who delivered a Unit Acceptance Notice. Such Relocation Notice, to be filed with the Rent Board and delivered to the Tenant by certified mail to each unit, as well as to any address on the operative lease agreement, shall indicate that Developer intends to relocate the Tenant to his or her Replacement Unit on a date reasonably agreed upon by Developer and the Tenant, which date shall not be sooner than 30 days or later than 60 days after the delivery of the Relocation Notice unless an earlier date is agreed upon by Developer.

IX. Relocation Occurs

At the time of relocation, Developer shall assume responsibility, at Developer's sole cost, for moving the possessions of each Relocating Tenant from the Relocating Tenant's Existing Unit to the applicable Replacement Unit. Developer shall engage a licensed and bonded moving company, and Developer's mover shall be responsible for the loss, damage, or destruction of any personal property during the move. In addition, Developer's mover shall be responsible for packing (but not unpacking) the Relocating Tenant's possessions for the move. Developer shall pay all costs and fees directly to such moving companies.

Alternatively, each Tenant shall have the right to a relocation allowance as set forth in California Government Code section 7262(b) equal to the Residential Cost Schedule established by Part 24 of Title 49 of the Code of Federal Regulation (the "**Allowance**"). Developer shall, upon request, inform the Tenants of Developer's good faith computation of the Allowance amount. If a Tenant chooses the Allowance, Developer shall pay the Allowance to the Tenant not less than two weeks before the anticipated relocation date, and thereafter the Tenant shall be responsible for moving his or her own possessions to the applicable Colton Street Unit or offsite.

Developer shall pay for any utility hook-up fees or charges incurred by a Relocating Tenant, including cable TV and internet service initiation fees incurred in relocating to a Replacement Unit, but only to the extent that the Relocating Tenant had such utilities, cable television, or internet service activated in his or her Existing Unit. Upon the relocation of a Relocating Tenant and payment of the utility hook-up fees as set forth in this Agreement, Developer shall not be subject to any state or local relocation payments, inclusive of the relocation payment requirements of Section 37.9C of the Rent Ordinance. Each Tenant relocated from the Civic Center Hotel will be offered a lease, in a form approved by MOHCD, enabling such Tenant to remain in the assigned Colton Street Unit for the life of the building and initially at the same base rent payable under such Tenant's lease of space in the Civic Center Hotel, subject to standard termination remedies permitted under the San Francisco Rent Ordinance.

X. Occupants Who Elect Not to Relocate and the Building Vacancy Date

Once a Tenant rejects or is deemed to have rejected a Replacement Unit pursuant to the Agreement, Developer shall continue to rent to the Tenant his or her existing unit at the Civic Center Hotel under the terms of the existing rental agreement until such time as (a) the Tenant voluntarily terminates the tenancy, or (b) each of the following has occurred: (i) Developer stops

leasing unoccupied units in the Civic Center Hotel to new tenants, and (ii) Developer delivers a "Notice to Terminate Tenancy" pursuant to Section 37.9(a)(15) of the Rent Ordinance to the Tenants. Developer shall deliver the Notice to Terminate Tenancy to all remaining Tenants at the Civic Center Hotel (who are not Relocating Tenants) on the same date, which is on or after the last day that all Relocating Tenants are scheduled for relocation to the Colton Street Building. This Notice to Terminate Tenancy shall require Tenants to vacate at the end of not less than a 60-day period after service of the notice is completed, and such last date for vacating the premises is the "**Civic Center Hotel Vacancy Date**". The Notice to Terminate Tenancy shall be filed with the Rent Board and served in a manner allowed by state law on Tenants who have rejected, or been deemed to have rejected, a Replacement Unit.

Any Tenant that chooses to permanently vacate the Civic Center Hotel and not move to the assigned Colton Street Unit shall be entitled to relocation benefits as a displaced person under San Francisco Administrative Code Section 37.9C, which does not include Section 37.9(a)(15) as a "Covered No-Fault Eviction" but shall, for purposes of this provision and this Agreement, be deemed to constitute a displacement that comes under the requirements of Administrative Code Section 37.9C(a)(1). Developer shall make any such payment and provide benefits as required under Section 37.9C, and shall indemnify the City against any and all claims resulting from this Agreement or the failure to satisfy the requirements of Section 37.9C or any relocation law to the extent applicable.

Nothing in this Exhibit D-1 shall limit Developer's rights under Administrative Code Section 37.9(a)(15) with respect to any Tenant who refused to move or to accept a Colton Street Unit or the relocation benefits offered by Developer, and nothing herein shall limit a Tenant's defenses to such an action. If any Tenant refuses to move after being required to do so by Developer, then Developer may initiate an action against any such Tenant pursuant to San Francisco Administrative Code Section 37.9(a)(15).

Exhibit D-2

GROUND LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS GROUND LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment Agreement") is made as of _____, 20__ (dated for reference purposes only), by and between _____, a _____ ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignee").

RECITALS

A. U.A. Local 38 Pension Trust Fund, as "Lessor" ("Landlord"), and Assignor, as "Lessee" entered into that certain Ground Lease dated _____, 2017 ("Ground Lease"), for the lease of the land, located in the City and County of San Francisco, State of California, as more specifically described in Exhibit "A" of the Ground Lease and Landlord's interest in any buildings, structures, or other improvements located on the land (the "Premises"). Capitalized terms used herein without definition shall have their respective meanings set forth in the Ground Lease.

B. Assignor desires to assign to Assignee as of the Effective Date, as set forth in Section 1.1 below, all of its right, title and interest in and to the Ground Lease (the "Assignment"), and Assignee desires to accept from Assignor such Assignment and to assume each and all of the obligations of the "Lessee" under the Ground Lease to be performed following the Effective Date.

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

Assignor's Assignment.

Assignment. Assignor hereby assigns, sells, conveys and otherwise transfers to Assignee all of Assignor's right, title and interest in and to the Ground Lease (including all of Assignor's right, title, and interest in and to any prepaid rents that have been paid by Assignor under the Ground Lease for any period after the date of this Assignment), effective on the date of full execution of this Assignment Agreement (the "Effective Date").

1.1 Assignor's Warranty. Assignor warrants that the Ground Lease attached hereto as Exhibit A, which by this reference is made a part hereof, is a true and correct copy of the entire Ground Lease between Landlord and Assignor with respect to the Premises.

Assumption by Assignee.

Assumption. Assignee hereby accepts the assignment of all of Assignor's right, title and interest in and to the Ground Lease, and, from and after the Effective Date, assumes and agrees to be bound by and perform, as a direct obligation of Assignee to Landlord, each and all of the obligations, terms, covenants and agreements of the "Lessee" under the Ground Lease.

Condition of the Premises. Assignee acknowledges that Assignee has inspected the Premises and accepts the Premises in their existing "AS IS" condition. No representations or

warranties of any kind, express or implied, have been made by Assignor or any agent of Assignor to Assignee regarding the Premises.

Indemnity. Assignor hereby agrees to indemnify Assignee and hold Assignee harmless from and against any and all claims pertaining to the Ground Lease arising prior to the Effective Date, and Assignee hereby agrees to indemnify Assignor and hold Assignor harmless from and against any and all claims pertaining to the Ground Lease arising from and after the Effective Date, including without limitation, any liability, damages, costs and expenses, including reasonable attorneys' fees and costs, suffered or incurred by Assignor as a result of any default under the Ground Lease by Assignee.

General Provisions.

Ground Lease in Force. Except as set forth in this Assignment Agreement, all provisions of the Ground Lease shall remain unchanged and in full force and effect and are hereby ratified and confirmed.

Conflict. In the event of any conflict between the provisions of the Ground Lease and this Assignment Agreement, the provisions of this Assignment Agreement shall govern.

Entire Agreement. This Assignment Agreement constitutes the final, complete and exclusive statement between the parties hereto pertaining to the terms of Assignor's assignment of the Ground Lease to Assignee, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Assignment Agreement by, nor is either party relying on, any representation or warranty outside those expressly set forth in this Assignment Agreement. Any agreement made after the date of this Assignment Agreement is ineffective to modify, waive, or terminate this Assignment Agreement, in whole or in part, unless that agreement is in writing, is signed by the parties to this Assignment Agreement, and specifically states that agreement modifies this Assignment Agreement.

Waiver. Except as explicitly stated in this Assignment Agreement, nothing contained herein will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Ground Lease.

Litigation Expenses. In any lawsuit, action, arbitration, quasi-judicial proceeding, administrative proceeding, or any other proceeding brought by either party to enforce any of such party's rights or remedies under this Assignment Agreement, or any covenant therein, including any action or proceeding for damages, unlawful detainer, declaratory relief, breach of lease, or any other action or proceeding to collect any payments required under this Assignment Agreement, to enforce this Assignment Agreement, or to quiet title against the other party, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action or proceeding, including, but not limited to, all costs of reasonable investigation, and all costs associated with expert witnesses and expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party. This provision is separate and several and shall survive the merger of this Assignment Agreement into any judgment on this Assignment Agreement.

Notices. Any notice, approval or other communication under this Assignment Agreement shall be in writing and shall be given by registered or certified mail or by a nationally recognized overnight courier, such as FedEx, or delivered personally to the party's mailing address set forth below:

ASSIGNOR: _____
_____
_____
_____

ASSIGNEE: _____
_____
_____
_____

Any party may change its mailing address at any time by giving written notice of such change to the other parties in the manner provided herein at least ten (10) days prior to the date such change is effective. All notices under this Assignment Agreement shall be deemed given upon the earlier of receipt or three (3) days after the date it was mailed as provided in this Section 4.6, if sent by registered or certified mail, or one (1) day after delivery to the overnight courier, or upon the date personal delivery is made; provided, however, that any refusal to accept delivery shall be deemed to constitute receipt.

No Brokers. Assignor and Assignee represent and warrant to each other that no party is entitled to any brokerage commission, finder's fee or other commission or fee in connection with the execution of this Assignment Agreement. Each party agrees to indemnify and hold the other harmless from and against any and all damage, loss, cost or expense including, without limitation, all attorneys' fees and disbursements incurred by reason of any claim of or liability to any broker or other person representing, or claiming to represent, the indemnifying party for commissions or other compensation or charges with respect to the negotiation, execution and delivery of this Assignment Agreement, and such obligations shall survive the expiration or sooner termination of the Ground Lease and this Assignment Agreement.

Governing Law. This Assignment Agreement will be governed by, and construed in accordance with, California law.

Successors and Assigns. This Assignment Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective executors, administrators, successors and assigns.

Counterparts. This Assignment Agreement may be executed in several counterparts, and by the parties hereto in separate counterparts, and each counterpart, when so executed and delivered (which delivery may be by telecopy or by electronic mail in pdf format), shall constitute an original, and all such separate counterparts shall constitute but one and the same instrument.

Word Usage; Captions. Unless the context clearly requires otherwise, (a) the plural and singular numbers will each be deemed to include the other; (b) the masculine, feminine, and neuter genders will each be deemed to include the others; (c) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (d) "may" is permissive; (e) "or" is not exclusive; and (f) "includes" and "including" are not limiting. Captions to the sections in this Assignment Agreement are included for convenience only and do not modify any of the terms of this Assignment Agreement.

Signatures on following page

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement on the dates set forth below.

ASSIGNOR:

Dated: _____, 20__

_____,
a _____

By:_____

Name: _____

Title: _____

ASSIGNEE:

Dated: _____, 20__

CITY AND COUNTY OF SAN FRANCISCO

By:_____

Name: _____

Title: _____

APPROVED:

[_____]
City Attorney

By: _____
Deputy City Attorney

EXHIBIT "A" TO ASSIGNMENT AGREEMENT

GROUND LEASE

Exhibit D-3

Title Reports for Colton Street Parcel and Civic Center Hotel Property]

Exhibit D-4

Baseball Arbitration Appraisal Process

1. Arbitration for Fair Market Value.

1.1 Appointment. Each Party shall appoint one (1) appraiser within thirty (30) days after the notice that the arbitration provisions of this Section have been invoked. Upon selecting its appraiser, each Party shall promptly notify the other party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. Each such MAI appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing multi-family real estate in the City and County of San Francisco. If either Party fails to appoint its appraiser within such thirty (30)-day period, the appraiser appointed by the other party shall individually determine the Fair Market Value in accordance with the provisions hereof.

1.2 Instruction and Completion. The term "Fair Market Value" shall mean the then current fair market value of the Colton Street Parcel as determined by each appraiser pursuant to this Exhibit D-4. Each appraiser will make an independent determination of the Fair Market Value. The following instructions shall govern the preparation and delivery of each appraisal report setting for the respective appraiser's opinion of the Fair Market Value. The parties may supplement or modify these instructions upon mutual agreement. Each final opinion of value will be stated in a self-contained[2] appraisal report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions, as necessary and typical of a complete, self-contained appraisal report in compliance with the current version of the Uniform Standards of Professional Appraisal Practice ("USPAP"). The Appraisal Report will include the appraiser's final opinion of the Fair Market Value stated as a specific dollar figure. The Colton Street Parcel shall be appraised based on the assumption that the Colton Street Parcel is entitled for a 100 unit building of housing consistent with the Colton Street Building without affordability restrictions other than standard onsite inclusionary under Planning Code section 415 and assuming that the following are applicable to the property: (i) the Ground Lease; (ii) the Development Agreement (subject to the eventual expiration thereof); (iii) permitted exceptions to title; (iv) the final subdivision map; (v) applicable zoning; (vi) applicable development impact fees; (vii) the property is in its then-current "as-is", "where-is" condition; and (viii) such other documents and restrictions that the City and Developer mutually agree to present to the appraisers during the appraisal process. The Fair Market Value will be determined as if the

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

Colton Street Parcel were served by streets and utilities but otherwise vacant and unimproved by any structures, buildings, improvements, fixtures, additions, alterations, and betterments of whatsoever nature or description. Each appraiser will use sales and ground lease comparison to estimate value. Such comparable market date shall be presented in individual write-up sheets. The appraiser shall adhere to USPAP direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Fair Market Value. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the Fair Market Value to the Parties within sixty (60) days after the appointment of the last of such appraisers. If the higher appraised Fair Market Value is not more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the Fair Market Value shall be the average of such two (2) Fair Market Value figures.

1.3 Potential Third Appraiser. If the higher appraised Fair Market Value is more than one hundred ten percent (110%) of the lower appraised Fair Market Value, then the first two appraisers shall agree upon and appoint an independent third appraiser within thirty (30) days after both of the first two (2) appraisals have been submitted to the Parties, in accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser set forth above. The two appraisers shall inform the parties of their appointment at or before the end of such thirty (30)-day appointment period. Each Party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal. Either Party may, by written notice to the other Party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section. In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Agreement. If for any reason the two appraisers do not appoint such third appraiser within such thirty (30)-day period (or within a reasonable period thereafter), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within sixty (60) days from the date on

which the Party first applies to the Court for appointment of the third appraiser, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third appraiser meeting the foregoing qualifications.

1.4 Baseball Appraisal. Such third appraiser shall consider the appraisals submitted by the first two appraisers, as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers shall submit any such evidence to such third appraiser, it shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other Party and the appraiser such Party selected, at the same time it submits the same to the third appraiser. Neither Party, nor the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the Fair Market Value determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Fair Market Value. The determination of the third appraiser shall be limited solely to the issue of deciding which of the determinations of the two appraisers is closest to the actual Fair Market Value. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Agreement.

1.5 Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Fair Market Value by the accepted appraisal shall be conclusive, final and binding on the Parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Agreement and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Agreement. Subject to the provisions of this Section, the Parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

1.6 Fees and Costs; Waiver. Each Party shall bear the fees, costs and expenses of the appraiser it selects. The fees, costs and expenses of the third appraiser shall be shared equally by the City and Developer.

Exhibit E

List of Approvals

Board of Supervisors

1. Adoption of findings under CEQA.

2. Adoption of findings of consistency with the *General Plan* and priority policies of *Planning Code* Section 101.1.

3. Approval of amendment of the Market/Octavia Plan Maps 1 and 3 and Section 7.2.5 to reflect the parcel reconfiguration required to accommodate the Joseph P. Mazzola Gardens.

4. Approval of an amendment to the Height and Bulk Map to change the height and bulk designation of the affordable housing portion of the project site from 45-X to 68-X and to reflect the reconfigured open space parcel for a proposed privately-owned, publicly-accessible open space.

5. Approval of an amendment to the Zoning Use District Map (rezoning) to reflect the reconfigured open space parcel for Joseph P. Mazzola Gardens.

6. Approval of Special Use District to reflect other Code compliance issues on a site-wide basis, such as open space and narrow street setbacks.

7. Approval of this Agreement.

8. Approval of sidewalk widening legislation.

Planning Commission

1. Certification of the Environmental Impact Report, and adoption of findings under CEQA.

2. Adoption of findings of consistency with the *General Plan* and priority policies of *Planning Code* Section 101.1.

3. Recommendation to the Board of Supervisors of amendment of the Market/Octavia Plan Maps 1 and 3 and Section 7.2.5 to reflect the parcel reconfiguration required to accommodate the Joseph P. Mazzola Gardens.

4. Recommendation to the Board of Supervisors of an amendment to the Height and Bulk Map to change the height and bulk designation of the affordable housing portion of the project site from 45-X to 68-X and to reflect the reconfigured open space parcel for a privately-owned, publicly-accessible open space.

5. Recommendation to the Board of Supervisors of an amendment to the Zoning Use District Map (rezoning) to reflect the reconfigured open space parcel for Joseph P. Mazzola Gardens.

6. Recommendation to the Board of Supervisors of Special Use District to reflect other Code compliance and phasing issues on a site-wide basis, such as open space and narrow street setbacks.

7. Approval of this Agreement, with recommendation to the Board of Supervisors for approval.

8. Approval of Conditional Use/Planned Unit Development authorization from the Planning Commission per *Planning Code* Sections 303 and 304 to permit development of a large lot (10,000 square feet and above) and large non-residential use (6,000 square feet and above), and to provide exceptions related to rear yard, dwelling unit exposure, active street frontage, loading and height measurement, including adoption of the MMRP as part of the conditions of approval.

9. General Plan referral for sidewalk widening.

Department of Building Inspection

1. Review and approval of demolition, grading, and building permits.

2. If any night construction work is proposed that would result in noise greater than five dBA above ambient noise levels, approval of a permit for nighttime construction is required.

San Francisco Public Works

1. If sidewalk(s) are used for construction staging and pedestrian walkways are constructed in the curb lane(s), approval of a street space permit from the Bureau of Street Use and Mapping.

2. Approval of a permit to remove and replace street trees adjacent to the project site.

3. Approval of construction within the public right-of-way (e.g., curb cuts, bulb-outs and sidewalk extensions) to ensure consistency with the *Better Streets Plan*.

4. Approval of parcel mergers and new subdivision maps.

5. Recommendation of sidewalk widening legislation.

San Francisco Municipal Transportation Agency

1. Improvements by the Sustainable Streets Division.

2. If sidewalk(s) are used for construction staging and pedestrian walkways are constructed in the curb lane(s), approval of a special traffic permit from the Sustainable Streets Division.

3. Approval of construction within the public right-of-way (e.g., bulb-outs and sidewalk extensions) to ensure consistency with the *Better Streets Plan*.

San Francisco Public Utilities Commission

1. Approval of any changes to sewer laterals (connections to the City sewer system).

2. Approval of an Erosion and Sediment Control Plan, in accordance with Article 4.1 of the *San Francisco Public Works Code*.

3. Approval of post-construction stormwater design guidelines, including a stormwater control plan that complies with the City's 2016 Stormwater Management Requirements and Design Guidelines.

San Francisco Department of Public Health

1. Approval of an Enhanced Ventilation Proposal as required pursuant to Article 38 of the *Health Code*.

2. Approval of a Dust Control Plan as required pursuant to Article 22B of the *Health Code*.

3. Approval of a Work Plan for Soil and Groundwater Characterization and, if determined necessary by the Department of Public Health, a Site Mitigation Plan, pursuant to Article 22A of the *Health Code*.

Exhibit F

MMRP

Exhibit G

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO
(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

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

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO DEVELOPMENT AGREEMENT FOR [_____]

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

RECITALS

A. [Strada Brady LLC], a _____ and the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**"), entered into that certain Development Agreement (the "**Development Agreement**") dated as of _____, 201[_] for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on _____ as Document No. _____.

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

B. The Development Agreement provides that Developer (Assignor) has the right to: (i) Transfer all or a portion of the Project Site, (ii) assign all of its rights, title, interest and obligations under the Development Agreement to a Transferee with respect to the portions of the Project Site transferred to the Transferee, and (iii) upon the recordation of an approved Assignment and Assumption Agreement, to be released from any prospective liability or obligation under the Development Agreement related to the Transferred Property as set forth in Section 12.3 of the Development Agreement.

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

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

ASSIGNMENT AND ASSUMPTION

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

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

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

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

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

5. Housing Obligations. Assignee has read and understands the obligations set forth in Development Agreement Exhibit D as they relate to the Transferred Property. Without limiting the foregoing, Assignee agrees (1) to the terms and provisions of Exhibit D, including the indemnities, waivers and releases set forth therein, and (2) that the Development Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because it is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65919 of Division 1 of Title 7 of the California Government Code). Assignee understands that the City would not have been willing to enter into the Development Agreement without the provisions of Exhibit D.

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

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

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

_____
_____
_____
Attn: _____

With copy to:

_____
_____
_____
Attn: _____

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

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

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

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

Exhibit H

Notice of Completion and Termination

[*Form on Following Page*]

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

_____

[Strada Brady LLC]
[address]_____

_____

_____

Attn: _____

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

THIS NOTICE OF COMPLETION OF BUILDING AND COMMUNITY BENEFITS (this "Notice") dated for reference purposes only as of this _____ day of _____, 20__, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "City"), acting by and through its Planning Department, and [Strada Brady LLC, a _____ limited liability corporation] ("Developer") [*substitute party, if needed*].

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

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO, municipal corporation

By:_____
Director of Planning

Approved as to form:

[DENNIS J. HERRERA], City Attorney

By:_____
Deputy City Attorney

Exhibit A

[*attach legal description of Affected Property*]

Exhibit I

Workforce Agreement

[To be Attached]

Exhibit I

Workforce Agreement

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

A. **First Source Hiring Program.**

1. Each Project Sponsor shall, with respect to each Workforce Building[2], (i) include in each Contract for construction work a provision requiring each Contractor to enter into a FSHA Construction Agreement in the form attached hereto as Attachment A before beginning any construction work, and (ii) provide a signed copy thereof to the First Source Hiring Administration ("**FSHA**") and CityBuild within 10 business days of execution. The FSHA Construction Agreement shall be required for the initial construction of each Workforce Building, and for any improvements or alterations that require a Permit, as defined in San Francisco Administrative Code Chapter 83 ("**Chapter 83**"), during the 10 year period following issuance of the first temporary certificate of occupancy for the Workforce Building (the "**Workforce Period**").

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

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

2. Each Project Sponsor shall, with respect to each Workforce Building, comply with the requirements of San Francisco Administrative Code Chapter 83 ("**Chapter 83**") and upon entering into leases or other occupancy contracts for commercial space at the Premises that are subject to Chapter 83 with a tenant ("**Commercial Tenant**"), will include in each such contract a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment B, and (ii) provide a signed copy thereof to the FSHA within 10 business days of execution. The FSHA Operations Agreement shall be required for the initial Commercial Tenant and for any later Commercial Tenant that occupies all or part of a Workforce Building during the Workforce Period.

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

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

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

6. If a Project Sponsor fulfills its obligations as set forth in this Section A, it shall not be held responsible for the failure of a Contractor, Subcontractor, Commercial Tenant or any other person or party to comply with the requirements of Chapter 83 or this Section A. If a Project

Sponsor fails to fulfill its obligations under this Section A, the applicable provisions of Chapter 83 shall apply, though the City and the Project Sponsor shall have the right to invoke the process set forth in Section 9.2 of the Development Agreement.

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

C. **Local Business Enterprise (LBE) Utilization Program.**

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

Attachment A:

First Source Construction Hiring Agreement

This First Source Construction Hiring Agreement ("FSHA Construction Agreement") is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct [specify number of new dwelling units, and/or square feet of commercial space and number of accessory, off-street parking spaces] ("Workforce Building") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this FSHA Construction Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this First Source Construction Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Construction Agreement, initially capitalized terms shall be defined as follows:

a. "Core" or "Existing" workforce: Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.

b. Economically Disadvantaged Individual: An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq*.), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.

c. Hiring opportunity: When a Contractor adds workers to its existing workforce for the purpose of performing the Work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on a Workforce Building.

d. Job Notification: Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.

e. New hire: A "new hire" is any worker who is not a member of Contractor's core or existing workforce.

f. Referral: A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.

g. Workforce Building: The Colton Street Affordable Housing Building, Buildings A-D and the Plumbers' Union Hall Building, as described in Exhibit B to the Development Agreement, including initial tenant improvements , and any other Buildings or construction activities on the Project Site that require a Permit as defined in Chapter 83.

h. Workforce participation goal: The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for a Workforce Building.

i. Entry Level Position: A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent construction jobs related to the development of a commercial activity.

j. First Opportunity: Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.

k. Job Classification: Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

l. Job Notification: Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.

m. Publicize: Advertise or post available employment information, including participation in job fairs or other forums.

n. Qualified: An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this FSHA Construction Agreement.

o. System: The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

p. System Referrals: Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

q. Subcontractor: A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

r. Project Sponsor: Project Sponsor shall mean [*insert name of applicable Developer or Workforce Building owner]* , including any successor during the term of this FSHA Operations Agreement.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-Level Positions related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract for each Workforce Building:

i. On Attachment A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on each Workforce Building for each trade.

ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.

iii. Contractor will collaborate with CityBuild staff in completing the CityBuild Workforce Hiring Plan Form 2, to identify, by trade, the number of Core workers at Workforce Building project start and the number of workers at Workforce Building project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.

iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.

v. A negotiated and signed CityBuild Workforce Hiring Plan Form 2 will constitute the First Source Hiring Plan for each Workforce Building as required under Chapter 83.

b. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry

Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the Workforce Building.

c. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

i. If Contractor meets the criteria in Section 5(a) below that establishes "good faith efforts" of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

ii. After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes "good faith efforts" of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

d. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the First Opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable Collective Bargaining Agreements as defined in Section 8 below. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any Collective Bargaining Agreement(s) requiring compliance with a pre-established applicant referral process, Contractor's only obligations with regards to any available Entry Level Positions subject to such Collective Bargaining Agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor's obligations under this FSHA Construction Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the Collective Bargaining Agreement(s).

b. Contractor shall use "name call" privileges, in accordance with the terms of the applicable Collective Bargaining Agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this FSHA Construction Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction of a Workforce Building Attachment A-1: CityBuild Workforce Projection Form 1; and

b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this FSHA Construction Agreement. Such review shall be conducted by FSHA in accordance with Section 11 (c) below.

c. Meet with the Workforce Building project's Project Sponsor, general contractor, or CityBuild representative to review and discuss the plan to meet local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.

d. Contact a CityBuild representative to review hiring projections and goals for this Workforce Building project. Contractor must take active steps to advise all of its subcontractors of the local hiring obligations on the Workforce Building project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the Workforce Building project.

e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying expected hiring needs during the Workforce Building project's duration.

f. Notify the respective union(s) regarding local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate the union's Collective Bargaining Agreement(s).

g. Reserve "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable Collective Bargaining Agreement(s).

h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on this project in a timely matter in order to facilitate CityBuild's notification to these unions of the Workforce Building project's workforce requirements.

i. Submit a “Job Request” form to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). Contractor should simultaneously contact its union about the position as well, and let them know that Contractor has contacted CityBuild as part of its local hiring obligations.

j. The Contractor has an ongoing, affirmative obligation and must advise each of its subs of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the Workforce Building project, including openings that arise from layoffs of original crew. Contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the Contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.

k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Contractor will request a meeting with the Workforce Building project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.

l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Workforce Building project, source of hire, and any other pertinent information as pertain to compliance with this FSHA Construction Agreement.

m. Maintain accurate records of efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor through a San Francisco CBO whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Contractor on a Workforce Building project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and minimum hiring goals using Form 2: the CityBuild Workforce Hiring Plan, provided, however, that Contractor shall retain the primary responsibility for meeting the requirements imposed under this FSHA Construction Agreement. Contractor shall

ensure that this FSHA Construction Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this FSHA Construction Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this FSHA Construction Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, “essential functions” means those functions absolutely necessary to remain open for business.

8. CONTRACTOR’S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

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

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this FSHA Construction Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this FSHA Construction Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this FSHA Construction Agreement, CityBuild shall:

a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.

b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor’s Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;

c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;

d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;

f. Provide Contractor with reporting forms for monitoring the requirements of this FSHA Construction Agreement; and

g. Monitor the performance of the FSHA Construction Agreement by examination of records of Contractor as submitted in accordance with the requirements of this FSHA Construction Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:

(1) Applicants
(2) Job offers
(3) Hires
(4) Rejections of applicants

b. The Agreement shall require Contractor to report First Source Hiring efforts to FSHA utilizing the submittal of electronic certified payrolls for the purpose of tracking and reporting through the City's Project Reporting System. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.

c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this FSHA Construction Agreement.

12. DURATION OF THIS AGREEMENT

This FSHA Construction Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this FSHA Construction Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

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

If to FSHA: First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
- Attn: Ken Nim, Compliance Manager, ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
- Attn: Ken Nim, Compliance Manager, ken.nim@sfgov.org

If to Project Sponsor:

- Attn:

If to Contractor:

- A t t n :

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

b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This FSHA Construction Agreement and the Development Agreement contain the entire agreement between the parties to this FSHA Construction Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest. This FSHA Construction Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Contractor, their obligations shall be joint and several.

15. SEVERABILITY

If any term or provision of this FSHA Construction Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this FSHA Construction Agreement shall not be affected.

16. COUNTERPARTS

This FSHA Construction Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. HEADINGS

Section titles and captions contained in this FSHA Construction Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this FSHA Construction Agreement or the intent of any of its provisions

18. GOVERNING LAW

This FSHA Construction Agreement shall be governed and construed by the laws of the State of California, and interpreted consistent with the requirements of Chapter 83.

IN WITNESS WHEREOF, the following have executed this FSHA Construction Agreement as of the date set forth above.

CONTRACTOR:

Date: Signature: _____

Name of Authorized Signer: Company:

Address: Phone:

Email:

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FIRST SOURCE HIRING PROGRAM
ATTACHMENT A-1 - CITYBUILD
CONSTRUCTION CONTRACTS

FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.
All subcontractors with contracts in excess of $100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.
The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.
It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.
All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.

Construction Project Name:		Construction Project Address:	
Projected Start Date:		Contract Duration:	*(calendar days)*
Company Name:		Company Address:	
Main Contact Name:		Main Phone Number:	
Main Contact Email:			
Name of Person with Hiring Authority:		Hiring Authority Phone Number:	
Hiring Authority Email:			

Name of Authorized Representative	Signature of Authorized Representative*	Date

By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Table 1: Briefly summarize your contracted or subcontracted scope of work
Table 2: Complete on the following page

List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.
Total Number of Workers on the Project: The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.

Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J A	Y N			
	J A	Y N			
	J A	Y N			
	J A	Y N			
	J A	Y N			
	J A	Y N			
	J A	Y N			
	J A	Y N			

Table 3: List your core or existing employees projected to work on the project

Please provide information on your projected core or existing employees that will perform work on the jobsite.
"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J A		
		J A		
		J A		
		J A		
		J A		
		J A		
		J A		
		J A		
		J A		
		J A		
		J A		
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		J A		
		J A		
		J A		
		J A		
		J A		
		J A		
		J A		
		J A		

FOR CITY USE ONLY: CityBuild Staff: ;;;;;;;;;;;;;;;;;;;;;;;;; Approved: Yes **o** No **o** Date:
Reason:

FORM 4: FIRST SOURCE SUMMARY REPORT

Reporting Period (Month/Year):

Project Name:

Project Address

Company Name:

Date:

Contractor

Contact Number:

LAST	FIRST	ZIP CODE	JOURNEY/ APPRENTICE	CRAFT	REFERRAL SOURCE	NEW HIRE	DATE OF HIRE (New Hires Only)
Doe	John	94080	JOURNEY	LABORER	Union	YES	1/1/2012
Doe	Jane	94124	APPRENTICE	CARPENTER	CityBuild	YES	2/1/2012
Piper	Peter	94502	JOURNEY	PILE DRIVER	Core	NO	9/1/2011

COUNT	1 (e.g.)	2 (e.g.)	3 (e.g.)														

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FIRST SOURCE HIRING PROGRAM
CITYBUILD ATTACHMENT 3
CONSTRUCTION CONTRACTS

FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: citybuild@sfgov.org

2. Contact Workforce Development at 415-701-4848 or by email: citybuild@sfgov.org

   OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

ATTENTION: *Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.*

Section A. Job Notice Information

Trade _____ # of Journeymen _____ # of Apprentices _____

Start Date _____ Start Time _____ Job Duration _____

Brief description of your scope of work: _____

Section B. Union Information *(Union contractors complete Section B. Otherwise, leave Section B blank)*

Local # _____ Union Contact Name _____ Union Phone # _____

Section C. Contractor Information

Project Name: _____

Jobsite Location: _____

Contractor: _____ Prime Sub

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Contact Signature _____ Date _____

OEWD USE ONLY *Able to Fill* Yes ❑ No ❑

City and County of San Francisco

First Source Hiring Program
Office of Economic and Workforce Development

Edwin M. Lee, Mayor

Workforce Development Division

Attachment B: First Source Hiring Agreement
For Business, Commercial, Operation and Lease Occupancy of the Building

This First Source Hiring Agreement (this "FSHA Operations Agreement"), is made as of , by and between (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy the building at [Address] "Premises" which required a First Source Hiring Agreement between the project sponsor and FSHA due to the issuance of a building permit for 25,000 square feet or more of floor space or construction often or more residential units; and,

WHEREAS, the Project Sponsor was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract"); and

WHEREAS, as a material part of the consideration given by Lessee under the Contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Operations Agreement, initially capitalized terms shall be defined as follows:

a. Entry Level Position: Any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.

b. Workforce System: The First Source Hiring Administrator established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development (OEWD).

c. Referral: A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

d. Lessee: Tenant, business operator and any other occupant of a Workforce Building requiring a First Source Hiring Agreement as defined in SF Administrative Code Chapter 83. Lessee shall include every person tenant, subtenant, or any other entity occupying a Workforce Building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

e. Project Sponsor shall mean [*insert name of applicable Developer or Workforce Building owner]* , including any successor during the term of this FSHA Operations Agreement.

f. Workforce Building: The Colton Street Affordable Housing Building, Buildings A-D and the Plumbers' Union Hall Building, as described in Exhibit B to the Development Agreement, including initial tenant improvements therein, and any other Buildings or construction activities within the Project Site that require a Permit as defined in Chapter 83.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Building until the earlier of (a) ten (10) years following the date Lessee opens for business at the Premises, or (b) termination of Lessee's lease or other occupancy agreement, at which time this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this FSHA Operations Agreement. Determination of good faith efforts shall be based on all of the following:

a. Lessee will execute this FSHA Operations Agreement and Attachment B-1 upon entering into leases for the commercial space of the Workforce Building. Lessee

will also accurately complete and submit Attachment B-1 annually to reflect employment conditions.

b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.

c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry-Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.

d. Lessee accurately completes and submits Attachment B-1, the "First Source Employer's Projection of Entry-Level Positions" form to OEWD's Business Services Team upon execution of this FSHA Operations Agreement.

e. Lessee fills at least 50% of open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.

f. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

Lessee's failure to meet the criteria set forth in Section 3 (a.b.c.d.e.) does not impute "bad faith" and shall trigger a review of the referral process and compliance with this FSHA Operations Agreement. Failure and noncompliance with this FSHA Operations Agreement will result in penalties as defined in SF Administrative Code Chapter 83, Lessee agrees to review SF Administrative Code Chapter 83, and execution of the FSHA Operations Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this FSHA Operations Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the Development Agreement contain the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or

unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

Section titles and captions contained in this FSHA Operations Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This FSHA Operations Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this FSHA Operations Agreement as of the date set forth above.

Date: _____ Signature: _____

Name of Authorized Signer: Company:

Address: Phone:

Email:

Business Name: _____ Phone: _____

Main Contact: _____ Email: _____

_____ _____

Signature of authorized representative* Date

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Attachment B and Attachment B-1. Lessee will also complete and submit an Attachment B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) If an Entry Level Position becomes available.

Section 1: Select your Industry

Auto Repair	Entertainment	Personal Services
Business Services	Elder Care	Professionals
Consulting	Financial Services	Real Estate
Construction	Healthcare	Retail
Government Contract	Insurance	Security
Education	Manufacturing	Wholesale
Food and Drink	I don't see my industry *(Please Describe)*3333333333333333333333333333333	

Section 2: Describe Primary Business Activity

_____

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
mailto:Business.Services@sfgov.org
Website: www.workforcedevelopmentsf.org

Attachment C:

Local Business Enterprise Utilization Plan

1. Purpose and Scope. This Attachment C ("LBE Utilization Plan") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties. In connection with the design and construction phases of each Workforce Building (as defined below), and in connection with contracting opportunities during the Workforce Period, the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises (“LBEs”). Each Project Sponsor of a Workforce Building shall participate in a local business enterprise program, and the City’s Contract Monitoring Division ("CMD") will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Project Sponsor, Construction Contractor or professional services firm retained to work on a Workforce Building, as the case may be (each, a “Contracting Party”) as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Project Sponsor or a Contractor or professional services firm. When the Project Sponsor or a Contractor or professional services firm requires and seeks products from an LBE supplier or distributor, no more than sixty percent of the cost of the product shall be credited towards LBE participation goals. If the listed supplier or distributor does not regularly stock or is a specially manufactured item(s), the required product, no more than five percent of the cost of the product shall be credited towards LBE participation goals.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of a Workforce Building.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of a Workforce Building.

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

f. “Good Faith Efforts” shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 6 below.

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

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

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

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

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

l. "Workforce Building" shall mean all Buildings as described in Exhibit B to the Development Agreement, including tenant improvements and any work that requires issuance of a Permit under Chapter 83, and shall also include construction and maintenance work in the privately owned, publicly accessible open spaces. Developer will use good faith efforts during the Workforce Period. , consisting of the following, to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial, landscaping, security etc.) (“Service Contracts”) with respect to the Workforce Buildings: (1) meet and confer with CMD about prospective Service Contracts; (2) advertise for such Service Contracts where feasible, (3) consider in good faith any qualified companies referred by CMD; and (4) if a master association is responsible for entering into Service Contracts, pass on the obligations of this subsection to such master association. Hiring decisions shall be entirely at the discretion of Developer and the master association, as applicable.

m. “Workforce Period” shall mean the period starting on the date of issuance of the first temporary certificate of occupancy for a Workforce Building to the tenth (10th) anniversary of such date.

4. Diversity. Developer will be seeking to, whenever practicable, engage contracting teams that reflect the diversity of the City and participation of both businesses and residents from the City’s most disadvantaged communities. Developer’s compliance with the good faith efforts in Section 6 shall be deemed to satisfy this objective.

5. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Program and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation

goal of **17%** of the total cost of all Contracts for a Workforce Building awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A).

6. Project Sponsor Obligations. Each Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 16. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns. The LBE Liaison shall be a LBE Consultant with the experience in and responsible for making recommendations on maximizing engagement of LBEs from disadvantaged communities such as 94103, 94107, 94124 and 94134.

The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. If a Project Sponsor fulfills its obligations as set forth in this Section 5 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 6 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 6 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will advertise for at least 30 days prior to the opening of bids or proposals, for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (http://mission.sfgov.org/OCABidPublication) and other local and trade publications, and

allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As practicable, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals to all for LBEs to ask questions about the selection process and technical specifications/requirements. A Project Sponsor may request CMD's permission to award a contract without advertising if the work consists of specialty services or otherwise does not provide opportunities for LBE participation.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its Prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. Contacts. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. Good Faith/Nondiscrimination. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. Incorporation into contract provisions. Project Sponsor shall include in prime Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including overall LBE participation goal and any LBE percentage that may be required under such Contract.

j. Monitoring. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest

governmental or third party avenues of assistance. Contractor, Subcontractor, Consultant and Subconsultant will work with the Project Sponsor and CMD in good faith to design and implement any commercially reasonable insurance programs that may become available to provide to LBE subcontractors access to the required coverage through either the owner, Owner-Controlled Insurance Policy (OCIP), general contractor, Contractor-Controlled Insurance Policy (CCIP), or other insurance programs.

l. Maintain Records and Cooperation. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 9 below to identify a strategy to meet the LBE goal;

m. Quarterly Reports. During construction, the LBE Liaison(s) shall prepare a quarterly report of LBE participation goal attainment and submit to CMD as required by Section 9 herein; and

n. Meet and Confer. Attend the meet and confer process described in Section 9.

7. Good Faith Outreach. Good faith efforts shall be deemed satisfied solely by compliance with Section 6. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 6.b, and following CMD's notice under Section 8.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

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

a. During the thirty (30) day advertising period for upcoming Contracts required by Section 6.b, CMD will work with the Project Sponsor and its prime Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.

b. Provide detailed technical assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.

c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.

d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.

9. Meet and Confer Process. Commencing with the first Contract that is executed for a Workforce Building, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant each Contractor and Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor

and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation and remediate deficiencies.

10. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 6 and 9 above.

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

12. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding good faith efforts as set forth in Section 6. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

a. Name/Type of Contract(s) let (e.g. Civil Engineering contract, Environmental Consulting, etc.)
b. Name of prime Contractors (including identifying which are LBEs and non-LBEs)
c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
d. Scope of work performed by LBEs (e.g. under an Architect, an LBE could be procured to provide renderings)
e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
f. Total LBE participation is defined as a percentage of total Contract dollars.
g. Performance in engaging LBEs from disadvantaged neighborhoods such as 94103, 94107, 94124, and 94134

13. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected prime Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The prime Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has

exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

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

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

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

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed $10,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

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

15. Duration of this Agreement. This Attachment C shall terminate (i) as to each Workforce Building where work has commenced under the Development Agreement, upon completion of initial construction, including initial tenant improvements, of the Workforce Building, and (ii) for any Workforce Building that has not commenced before the termination of the Development Agreement, upon the termination of the Development Agreement. Upon such termination, this Attachment C shall be of no further force and effect.

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

If to CMD:

Attn:

If to Project Sponsor:

Attn:

If to Contractor:

Attn:

If to Consultant:

Attn:

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

Schedule 1

Community Benefits Linkages and Impact Fees

Pursuant to Section 4.1 of the Agreement, three of Developer's Community Benefits obligations are tied to three specific Buildings that will be developed over the course of the Project. The linkages between the three specific Community Benefits and the three associated Buildings are detailed below, as well as the development impact fees that apply to the Project.

1. **Mazzola Gardens Open Space**. Prior to obtaining any temporary certificate of occupancy for Building A, Developer is obligated to complete the improvements to the Mazzola Gardens Open Space described in **Exhibit C-1** to the Agreement, or secure this obligation with a bond, insurance, or other security in form acceptable to the City. Developer has entered into the In Kind Agreement for the completion and ongoing maintenance of the Mazzola Gardens Open Space, receiving credit against the Market and Octavia Community Infrastructure Impact Fee that would otherwise apply to development on the site. If Developer does not complete the Mazzola Gardens Open Space as contemplated (because Developer does not construct Building A) before the expiration of this Agreement, then Developer shall pay on such date the Market and Octavia Community Infrastructure Impact Fee based on the development completed by such date. Developer's obligation to make pay this amount shall survive the expiration of this Agreement until paid, provided Developer may elect instead to complete the Mazzola Gardens Open Space as set forth in the In-Kind Agreement by notifying City of such election and then diligently prosecuting the work to completion.

2. **Mid-Block Open Space**. Prior to obtaining any temporary certificate of occupancy for Building B, Developer is obligated to complete the improvements to the Mid-Block Open Space described in **Exhibit C-1** to the Agreement, or secure this obligation with a bond, insurance, or other security in form acceptable to the City.

3. **Colton Street Affordable Housing Building**. Prior to obtaining a demolition or major renovation permit for Building C (the current Civic Center Hotel), Developer must have obtained Temporary Certificates of Occupancy for the Colton Street Affordable Housing Building described in **Exhibit D** to the Agreement. Developer will allow the Civic Center Hotel to continue to be operated as a navigation center as set forth in the Affordable Housing Program.

4. **Workforce Program**. The workforce requirements will apply to all building and commercial operations as set forth in the Workforce Program.

5. **Inclusionary Housing**. The BMR Units will be built in each of Buildings A – D as set forth in the Affordable Housing Program.

6. **Open Space Operation and Maintenance**. Developer shall cause the appropriate party (e.g., a master association) to enter into agreements for the ongoing operation, maintenance and repair of the Mazzola Gardens and Mid-Block Open Spaces.

7. **Development Impact Fees.** The following development impact fees apply to the Project: Child Care Fee, Market & Octavia Community Infrastructure Fee, Market & Octavia Inclusionary Affordable Housing Fee, Schools Fee, and Transportation Sustainability Fee.