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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 [INDIA BASIN _____]

FOR PROPERTY AT INNES BETWEEN EARL AND GRIFFITH STREETS

Block ____ : Lots _____

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EXHIBITS

- A Developer Property Legal Description
- B-1 India Basin Open Space Legal Description
- B-2 The Big Green Legal Description
- C Public ROWs Legal Description
- D List of Approvals
- E Design Standards and Guidelines
- F Housing Plan
- G Infrastructure Plan
- H Land Use Plan
- I MMRP
- J Parks and Open Space Plan
- K Phasing Plan and Phasing Diagram
- L Privately-Owned Community Improvements
- M Port/RPD Open Space Covenant
- N Design Review of RPD Park Parcels
- O Transportation Plan/TDM
- P Workforce Agreement
- Q Map of Public Improvements
- R Financing Plan
- S List of Applicable Impact Fees and Exactions
- T Map Showing Streets to be Vacated and Transferred to Developer
- U Map Showing Land Transfers
- V Form of Quitclaim Deed
- W Form of Grant Deed

- X Public Trust Exchange Agreement
- Y Form of Notice of Completion and Termination
- Z Form of Permits to Enter City Property
- AA Form of Assignment and Assumption Agreement

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND _____ LLC**

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this ____ day of _____, 2018, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**”), acting by and through its Planning Department, and _____ LLC, a _____ 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 owns the approximately 14.71 acre site along Innes Street, between Earl and Griffith Streets, composed of mostly undeveloped and open land. Additionally, Developer holds recorded options to purchase an additional approximately 2.46 acres of land, that include six buildings and structures covering approximately 20,250 square feet of the site, all located on the real property more particularly described on Exhibit A (the “**Developer Property**”).

B. The City owns the approximately 6.2 acre open space along the shoreline, adjacent to the Developer Property, all on real property more particularly described on Exhibit B-1 (the “**India Basin Open Space**”). A portion of the India Basin Open Space is under the jurisdiction of the Recreation and Park Department (“**RPD**”), and a portion is under the jurisdiction of the Port of San Francisco (“**Port**”). In connection with this Agreement, the India Basin Open Space, together with the property described in Exhibit B-2 (the “**Big Green**”), will be placed under Port jurisdiction for public trust purposes but operated, maintained and managed by RPD.

C. The City also owns 5.94 acres of developed and undeveloped public right-of-ways, consisting of partially paved east-west Earl and Griffith Streets, the paved cul-de-sac Arelious Walker, and the unpaved and fenced off Hudson Street, all on real property more particularly described on Exhibit C (the “**Public ROWs**”; and together with the Developer Property and the India Basin Open Space, collectively, the “**Project Site**”).

D. The Developer proposes a mixed use development on the Project Site that will include a new publicly accessible network of improved parkland and open space and a mixed-use urban village, including up to 1,575 dwelling units, and 676,052 sq. ft. (15.5 acres) of publicly accessible open space, as more particularly set forth in the Approvals (the “**Project**”).

E. The Project is anticipated to generate an annual average of approximately ____ construction jobs during construction and, upon completion, approximately ____ net new

permanent on-site jobs, and an approximately \$ _____ annual increase in general fund revenues to the City.

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

G. In addition to 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 twenty five percent (25%) of the total number of housing units for the Project; (2) workforce obligations, including significant training, employment and economic development opportunities as part of the development and operation of the Project; (3) construction and maintenance of the publicly accessible open space, totaling approximately twelve (12) acres; (4) delivery of child care space to serve not less than 50 children, as set forth in the Phasing Plan; and (5) sea level rise improvements as part of the development, and future funding for additional future sea level rise improvements, each as further described in this Agreement.

H. Through this Agreement, the City intends to create a series of contiguous, integrated waterfront parks, including both the India Basin Open Space and the Big Green, for the benefit of this southeast community and the residents of San Francisco and California at large. In addition, the City, through RPD as co-project sponsor under the India Basin EIR, intends to develop and improve the neighboring 900 Innes and India Basin Shoreline Park, each as described in the India Basin EIR (the India Basin Open Space, the Big Green, 900 Innes and India Basin Shoreline Park collectively referred to as the “**India Basin Park System**”). The City intends to add additional land to the India Basin Park System in the future by connecting it to an adjacent shoreline park, currently referred to as the Northside Park, that will be completed as part of the Candlestick/Hunters Point Shipyard development project. Upon the City’s acquisition of the Northside Park, the City will include that property as part of the India Basin Park System managed and operated by RPD. In the future, this park system may also include shoreline areas of the PG&E Hunter’s Point power plant.

I. 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.

J. The Final Environmental Report (“**FEIR**”) prepared for the Project and certified by the Planning Commission on [_____], 2018, 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. The information in the FEIR and the CEQA Findings were considered by the City in connection with approval of this Agreement.

K. On _____, 2018, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission 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.

L. On _____, 2018, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2018, 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 _____, 2018.

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

AGREEMENT

ARTICLE 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:

“15 Year Period” has the meaning set forth in Section 5.7.2.

“Administrative Code” means the San Francisco Administrative Code.

“Additional Community Facilities” has the meaning set forth in the Financing Plan.

“Affiliate” means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question.

“Agreement” means this Development Agreement, the Exhibits which have been expressly incorporated herein and any amendments thereto.

“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.

“Annual Review Date” has the meaning set forth in Section 8.1.

“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).

“Approvals” means the City approvals and entitlements listed on Exhibit D, including Later Approvals to the extent included pursuant to Section 5.1.

“Assignment and Assumption Agreement” has the meaning set forth in Section 12.2.

“Associated Community Benefits” is defined in Section 4.1.

“Big Green” means the real property described in Exhibit B-2.

“BMR Units” has the meaning set forth in the Housing Plan.

“Board of Supervisors” or **“Board”** means the Board of Supervisors of the City and County of San Francisco.

“Building” or **“Buildings”** means each new building that is constructed on the Project Site as part of this Agreement.

“CC&Rs” has the meaning set forth in Section 3.9.

“CEQA” has the meaning set forth in Recital I.

“CEQA Findings” has the meaning set forth in Recital J.

“CEQA Guidelines” has the meaning set forth in Recital I.

“CFD” has the meaning set forth in the Financing Plan.

“CFD Law” has the meaning set forth in the Financing Plan.

“**Chapter 56**” has the meaning set forth in Recital F.

“**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.

“**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, RPD, Port, OEWD, SFMTA, Public Works, 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).

“**City Attorney’s Office**” means the Office of the City Attorney of the City and County of San Francisco.

“**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.

“**City Parties**” has the meaning set forth in Section 4.7.

“**City Report**” has the meaning set forth in Section 8.2.2.

“**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.

“**CMA**” is defined in Section 12.1.

“**Commence Construction**” means (i) for vertical Buildings, the start of physical construction of the applicable Building foundation, and (ii) for Infrastructure and Parks and Open Spaces, the start of physical construction of the Infrastructure or the Parks and Open Spaces, as applicable, in accordance with the Public Improvement Agreement.

“**Community Benefits**” has the meaning set forth in Section 4.1.

“Complete” and any variation thereof shall mean, as applicable, that (i) a specified scope of work has been substantially completed in accordance with approved plans and specifications, (ii) the City Agencies or Non-City Responsible Agencies with jurisdiction over any required permits have issued all final approvals required for the contemplated use, and (iii) with regard to any Public Improvement, the City Engineer determines the Public Improvement has been completed to his or her satisfaction and is ready for its intended use, and the City Engineer issues a Determination of Completion, in accordance with the Subdivision Code and any applicable Public Improvement Agreement.

“Continuing Obligation” has the meaning set forth in Section 3.12.

“Control” means, with respect to any Person, any of the following: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the day to day management, policies or activities of such Person whether through ownership of voting securities, by contract or otherwise (excluding customary limited partner or non-managing member approval rights); (ii) the ownership (direct or indirect) of more than fifty percent (50%) of the profits or capital of another Person; (iii) a successor, or an acquirer of all or substantially all of the assets of such Person; or (iv) the ownership (direct or indirect) of more than fifty percent (50%) of the ownership interest of such Person (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof). “Controlled”, “Controlling” and “Common Control” have correlative meanings.

“Default” has the meaning set forth in Section 9.3.

“Design Guidelines” means the Design Standards and Guidelines attached as Exhibit E, as may be amended from time to time.

“Design Review Application” has the meaning set forth in Section 3.4.

“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.

“Development Agreement Statute” has the meaning set forth in Recital F, as in effect as of the Effective Date.

“Development Parcel” means a parcel within the Project Site on which a building will be constructed, as set forth in a Subdivision Map.

“Development Phase” has the meaning set forth in Section 3.2.1.

“Effective Date” has the meaning set forth in Section 2.1.

“Enacting Ordinance” has the meaning set forth in Recital M.

“Excusable Delay” has the meaning set forth in Section 11.5.2.

“Existing Standards” has the meaning set forth in Section 5.2.

“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.

“Facilities Special Taxes” has the meaning set forth in the Financing Plan.

“Federal or State Law Exception” has the meaning set forth in Section 5.8.1.

“FEIR” has the meaning set forth in Recital J.

“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.

“Financing Plan” means the plan attached to this Agreement as Exhibit R.

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

“Foreclosed Property” is defined in Section 10.5.

“General Plan Consistency Findings” has the meaning set forth in Recital K.

“Housing Plan” means the housing plan attached as Exhibit F.

“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 fee or in-lieu fees, housing (including affordable housing) fees, dedications 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.

“**India Basin Open Space**” means the real property described in Exhibit B-1.

“**Infrastructure**” means the infrastructure to be constructed by Developer as described in the Infrastructure Plan, including the Stormwater Management Improvements.

“**Infrastructure Design Exceptions Memo**” is defined in Section 5.2.1.

“**Infrastructure Plan**” means the infrastructure plan attached as Exhibit G.

“**Land Use Plan**” means the land use plan attached as Exhibit H.

“**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 (except as expressly noted) and are necessary or advisable for the implementation of the Project or the Associated Community Benefit, including without limitation, all approvals required under the SUD or as otherwise set forth in the Municipal Code, 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.

“**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.

“**Law Adverse to City**” is defined in Section 5.8.4.

“**Law Adverse to Developer**” is defined in Section 5.8.4.

“**Litigation Extension**” has the meaning set forth in Section 11.5.1.

“**Losses**” has the meaning set forth in Section 4.7.

“**Maintained Facilities**” shall mean those facilities set forth on the Maintenance Matrix attached as Exhibit A to the Financing Plan.

“**Maintenance Matrix**” shall have the meaning set forth in the Financing Plan.

“**Master HOA**” has the meaning set forth in Section 3.9.

“**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) reduces Community Benefits, (iv) increases the maximum height, density, bulk or size of the Project (except to the extent permitted under the SUD), (v) increases parking ratios, or (vi) reduces the Applicable Impact Fees and Exactions.

“**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.

“**MMRP**” means that certain mitigation monitoring and reporting program attached as Exhibit I.

“**MOHCD**” means the Mayor’s Office of Housing and Community Development.

“**Mortgage**” means a mortgage, deed of trust or other lien on all or part of the Project Site to secure an obligation made by the applicable property owner.

“**Mortgagee**” means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

“**Municipal Code**” means the San Francisco Municipal Code.

“**New City Laws**” has the meaning set forth in Section 5.6.

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

“**Objective Requirements**” has the meaning set forth in Section 3.4.

“**OEWD**” means the San Francisco Office of Economic and Workforce Development.

“**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.

“**Ongoing Maintenance Services**” has the meaning set forth in the Financing Plan.

“**Public Works**” means the San Francisco Department of Public Works.

“**Parks and Open Space Plan**” means the parks and open space plan attached as Exhibit J.

“**Parks and Open Spaces**” means all of the public open spaces developed in accordance with the Land Use Plan and the Parks and Open Space Plan, but not including the privately owned, publicly accessible open spaces identified on Exhibit L.

“**Party**” and “**Parties**” has the meaning set forth in the opening paragraph of this Agreement and shall also include any Transferee (each during its period of ownership of all or part of the Project Site).

“**Phasing Goals**” has the meaning in Section 3.2.4.

“**Phasing Diagram**” means the phasing diagram attached as part of Exhibit K.

“**Phasing Plan**” means the phasing plan attached as Exhibit K.

“**Plan Documents**” means the Land Use Plan, Infrastructure Plan, Phasing Plan, Housing Plan, Parks and Open Space Plan, Transportation Plan, Financing Plan, Design Guidelines and this Development Agreement, as any of the foregoing are amended from time to time.

“**Planning Code**” means the San Francisco Planning Code.

“**Planning Commission**” means the Planning Commission of the City and County of San Francisco.

“**Planning Department**” or “**Planning**” means the Planning Department of the City and County of San Francisco acting through the Planning Director or authorized staff.

“**Planning Director**” means the Director of Planning of the City and County of San Francisco.

“**Privately-Owned Community Improvements**” shall mean those facilities and services that are privately-owned and privately-maintained, at no cost to City, for the public benefit, that are not dedicated to the City. The Privately-Owned Community Improvements are listed on Exhibit L. Privately-Owned Community Improvements will include the Public Market and Parcel Breaks (as shown in the Phasing Plan and the Infrastructure Plan), pedestrian paths and bicycle lanes, storm drainage facilities, open spaces, and community or recreation facilities to be built on land owned and retained by Developer and, in some cases, on land that is dedicated to the City. [*conform to Matrix attached to Financing Plan*]

“**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.

“**Project**” means the mixed use development project as described in Recital D and the Approvals, including the Associated Community Benefits, together with Developer’s rights and obligations under this Agreement.

“**Project Site**” has the meaning set forth in Recitals A, B, and C and as more particularly described in Exhibits A, B-1, B-2 and C.

“**Project Special Taxes**” has the meaning set forth in the Financing Plan.

“**Project SUD**” means Planning Code Section 249.____ as adopted by the Board in Ordinance No. _____.

“**Proportionality Requirement**” has the meaning set forth in Section 3.2.4.

“Public Health and Safety Exception” has the meaning set forth in Section 5.8.1.

“Public Improvements” means the facilities, both on- and off-site, to be improved, constructed and dedicated by Developer and, upon Completion in accordance with this Agreement, accepted by the City. Public Improvements include the streets within the Project Site shown on Exhibit Q, and all Infrastructure and public utilities within the accepted streets (such as gas, electricity, water and sewer lines but excluding any non-municipal utilities), as well as sidewalks, bicycle lanes, street furniture, and paths and intersection improvements (such as curbs, medians, signaling, traffic controls devices, signage, and striping). The Public Improvements also include the Parks and Open Spaces, the SFPUC Infrastructure, and the SFMTA Infrastructure. The Public Improvements do not include Privately-Owned Community Improvements or, if any, privately owned facilities or improvements in the public right of way.

“Public Improvement Agreement” means an agreement between the City and Developer for the completion of required Public Improvements in the public right of way.

“Public Trust Exchange Agreement” has the meaning set forth in Section 6.5. A draft of the Public Trust Exchange Agreement is attached as Exhibit X.

“Qualified Project Costs” has the meaning set forth in the Financing Plan.

“RPD” means the City’s Recreation and Park Department.

“RPD Park Parcel” means a parcel of land within the India Basin Open Space or the Big Green as identified in the Land Use Plan and Parks and Open Space Plan.

“Services Special Taxes” has the meaning set forth in the Financing Plan.

“SFMTA” means the San Francisco Municipal Transportation Agency.

“SFMTA Infrastructure” means the Public Improvements to be designed and constructed by Developer that the SFMTA will operate and maintain upon Completion in accordance with this Agreement and Board of Supervisor acceptance.

“SFPUC” means the San Francisco Public Utilities Commission.

“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 applicable City requirements.

“SFPUC Infrastructure” means the Public Improvements to be designed and constructed by Developer that the SFPUC will operate and maintain upon Completion in accordance with this Agreement and Board of Supervisor acceptance.

“Stormwater Management Improvements” means the facilities, both those privately-owned and those dedicated to the City, that comprise the infrastructure and landscape system that is intended to manage the stormwater runoff associated with the Project, as described in the Infrastructure Plan. Stormwater Management Improvements include but are not limited to: (i)

swales and bioswales (including plants and soils), (ii) bio-gutters and grates (including plants and soils), (iii) tree wells, (iv) ponds, wetlands, and constructed streams, (v) stormwater cisterns, (vi) permeable paving systems, (vii) stormwater culverts, (viii) trench drains and grates, (ix) stormwater piping, (x) stormwater collection system, and (xi) other facilities performing a stormwater control function.

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

“**Subdivision Code**” means the San Francisco Subdivision Code and Subdivision Regulations.

“**Subdivision Regulations**” means subdivision regulations adopted by Public Works from time to time, including exceptions granted by the Director in accordance therewith.

“**Subdivision Map**” means any map that Developer submits for the Developer Property under the Map Act and the Subdivision Code, which may include tentative or vesting tentative subdivision maps, final or vesting final subdivision maps and any tentative or final parcel map, or transfer map, including phased final maps to the extent authorized under an approved tentative subdivision map.

“**Subdivision Map Act**” means the California Subdivision Map Act, California Government Code §§ 66410 *et seq.*

“**Term**” has the meaning set forth in Section 2.2.

“**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.

“**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.

“**Transferable Infrastructure**” means items of Infrastructure consisting of (1) final, primarily behind the curb, right-of-way improvements, including, sidewalks, light fixtures, street furniture, landscaping, and driveway cuts for a development parcel, and (2) utility laterals built within a development parcel or to connect the development parcel to the adjacent right of way.

“**Transitional Open Spaces**” shall mean those privately owned, publicly accessible open spaces identified on Exhibit L, to be maintained in accordance with Section 3.9.

“**Transportation Plan**” means the transportation plan attached as Exhibit O.

“**Utility Infrastructure**” means Public Improvements for utility systems that serve the Project Site, including subsurface systems for power, stormwater, sewer, domestic water, recycled water, AWSS, and above-ground facilities, such as streetlights, stormwater controls, and switchgears. Utility Infrastructure excludes telecommunications infrastructure and any privately owned utility improvements.

“**Vertical Development**” means planning, design, and construction or rehabilitation of buildings and other structures on the Project Site.

“**Vested Elements**” has the meaning set forth in Section 5.1.

“**Workforce Agreement**” means the Workforce Agreement attached as Exhibit P.

ARTICLE 2 EFFECTIVE DATE; TERM

Section 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**”).

Section 2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for fifteen (15) years thereafter (the “**Initial Term**”), unless earlier terminated as provided herein, provided that the Initial Term shall be extended for each day of a Litigation Extension. If Developer starts construction of a Development Phase during the Initial Term and thereafter continues to diligently prosecute the Development Phase to completion, and is not then in material default under this Agreement, then Developer shall have the right to extend the term of this Agreement for an additional ten (10) years (the “**First Extended Term**”) by delivering to City, at any time during the last year of the Initial Term, a notice of extension. The 10-year extension shall be automatic upon Developer’s delivery of the extension notice unless Developer is in material default at the time it sends the notice, in which case City may reject the notice by written notice of rejection to Developer, subject to Developer’s notice and cure rights under this Agreement. Developer’s failure to have the requisite affordable housing credits to meet the then-applicable milestone under the Housing Plan shall be deemed a material default, provided Developer can immediately cure any such default through the restriction of units as affordable or the payment of In-Lieu Fees as may be required to meet the milestone. [add failure to complete required parks] Developer shall have the potential ability to extend the term of this Agreement for an additional five (5) years (the “**Second Extended Term**”) by delivering to the City, at any time during the last year of the First Extended Term, a notice of extension. The decision to grant or deny the Second Extended Term shall be made by the Planning Director in his or her sole discretion. The term of this Agreement (the “**Term**”) shall mean the Initial Term plus, if applicable, the First Extended Term and the Second Extended Term. 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.

ARTICLE 3 GENERAL RIGHTS AND OBLIGATIONS

Section 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, including upon issuance the Later Approvals, 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 as set forth in this Agreement.

Section 3.2 Development Process.

3.2.1 Phases. The Parties anticipate that the Project will be developed in phases described in the Phasing Plan (each, a “**Development Phase**” and collectively, the “**Development Phases**”), in the manner described in this Section 3.2. The Parties acknowledge that Developer cannot guarantee the exact timing in which Development Phases will be constructed and whether certain development will be constructed at all. Such decisions depend on numerous factors that are not within the control of Developer or the City, such as market absorption and demand, interest rates, availability of financing, competition and other similar factors. Developer shall have the right to develop the Project in Development Phases in such order and time as determined by Developer in the exercise of its business judgment, but subject to the requirements of this Agreement with respect to Associated Community Benefits.

3.2.2 Boundaries. The proposed boundaries of each Development Phase is generally shown in the Phasing Plan. Final boundaries of each Development Phase will be established through Subdivision Maps, together with boundaries of all parcels within each Development Phase.

3.2.3 Associated Public Benefits. Because the Project will be built out over a number of years, the amount and timing of the Associated Community Benefits, including the Infrastructure and the Parks and Open Spaces, are allocated by Development Phase in accordance with the Plan Documents, including the Phasing Plan. The scope and timing of Infrastructure that is associated with specific parcels or Buildings, will be reviewed and approved by the City through the Subdivision Map approval process, but must be consistent with the Approvals. Privately Owned Community Improvements and Parks and Open Spaces will be provided as set forth in the Phasing Plan and the Parks and Open Space Plan. Associated Community Benefits related to Affordable Housing, workforce requirements, and transportation plans and programs will be delivered as set forth in the Housing Plan, Workforce Agreement and Transportation Plan, respectively.

3.2.4 Phasing Goals. The Phasing Plan and the Housing Plan reflect the requirement that Associated Community Benefits, including Public Improvements, affordable housing, Parks and Open Spaces, and Privately-Owned Community Improvements, must be

provided proportionately with the development of market-rate housing and commercial-office uses taking into account the Project as a whole (the “**Proportionality Requirement**”). So long as this Proportionality Requirement is satisfied, the City shall consider the following additional phasing goals (together with the Proportionality Requirement, collectively, the “**Phasing Goals**”) when considering Developer’s request for changes to the Phasing Plan:

(a) Rational Development. Associated Community Benefits should be developed in an orderly manner and consistent with the Plan Documents. Finished portions of the Project should be generally contiguous.

(b) Appropriate Development. Horizontal development should be timed to coordinate with the needs of vertical development. Completed Infrastructure must provide continuous reliable access and utilities to then-existing visitors, residents, and businesses.

(c) Market Timing. The boundaries and mix of uses within the Development Phase should be designed to minimize unsold inventory of Development Parcels.

(d) Flexibility. Flexibility to respond to market conditions, cost and availability of financing and economic feasibility should be provided.

3.2.5 Changes to Phasing. The Parties agree that many factors, including general economic conditions, the local housing, office, and retail markets, capital markets, general market acceptability, and local tax burdens will determine the rate at which various residential and commercial uses within the Project can be developed and absorbed. Developer may request changes to the Phasing Plan at any time, including changes to the proposed boundaries of a Development Phase and the timing for delivery of Associated Community Benefits, by submitting a written request to the Planning Director with a statement explaining the reasons for the proposed changes and how the changes remain consistent with the Phasing Goals, including the Proportionality Requirement.

3.2.6 City Approval. In considering whether to approve Developer’s requested changes, the Planning Director will consider whether the changes are consistent with the Phasing Goals, including the Proportionality Requirement if the change would delay the production of Associated Community Benefits or require a reallocation of Associated Community Benefits due to a change in the proposed boundaries of development parcels. The Planning Director may approve such change if, after consulting with all affected City Agencies and the City Attorney, he or she determines that the modified Phasing Plan meets the Phasing Goals, including the Proportionality Requirement. Any material change to the Phasing Plan that does not meet the Phasing Goals, as determined by the Planning Director, will require the approval of the Planning Commission after consultation with the affected City Agencies.

Section 3.3 Approval of Subdivision Maps. Developer shall obtain a Tentative Subdivision Map and enter into a Public Improvement Agreement before beginning to construct any Infrastructure or Building within a Development Phase. Developer is not required to obtain

one Subdivision Map for the entire Project Site, but can obtain multiple maps, one for each phase of development, as desired.

Section 3.4 Design Review and Objective Requirements. The Approvals include the Project SUD, the Plan Documents and the Design Guidelines to ensure that the urban, architectural and landscape design of the Buildings, public realm and Public Improvements at the Project Site will be of high quality and appropriate scale, include sufficient open space, and promote the public health, safety and general welfare. The design review procedures applicable to all new Buildings and Privately-Owned Community Improvements shall be as set forth in the Project SUD. Design review procedures applicable to Parks and Open Space within RPD Park Parcel will be as set forth in Section 3.5. The City shall review and approve, disapprove, or approve with recommended modifications any design review application under the Project SUD (a “**Design Review Application**”) in accordance with the requirements of this Agreement and the procedures specified in the Project SUD, as the same may be amended from time to time. Notwithstanding anything to the contrary in this Agreement, the City may exercise its reasonable discretion in approving the aspects of a Design Review Application that relate to the qualitative or subjective requirements of the Design Guidelines, including the choice of building materials and fenestration. In considering a Design Review Application and any Later Approval for those aspects of a proposed Building or Privately-Owned Community Improvement that meet the quantitative or objective requirements of the Design Guidelines and the other Plan Documents (the “**Objective Requirements**”), including without limitation, the Building’s proposed height, bulk, setbacks, streetwalls, location of uses and size of such uses, and amount of open space and parking, the City acknowledges and agrees that (i) it has exercised its discretion in approving the Project SUD, the Plan Documents and the Design Guidelines, and (ii) any proposed Design Review Application or Later Approval that meets the Objective Requirements shall not be rejected by the City based on elements that conform to or are consistent with the Objective Requirements, so long as the proposed Building or and Privately-Owned Community Improvements meets the Building Code as set forth in Section 5.4 (Strict Building Code Compliance).

Section 3.5 Design Review of Parks and Open Space within India Basin Open Space and Big Green. Before the City may issue any construction permit for any Parks and Open Space located within the India Basin Open Space or the Big Green, RPD must have first approved the schematic design of the applicable Parks and Open Space in accordance with Exhibit N.

Section 3.6 Construction of Public Improvements and Privately-Owned Community Improvements.

3.6.1 Construction. Developer shall undertake the design, development and installation of the Public Improvements and Privately-Owned Community Improvements at no cost to City (other than the public financing set forth in the Financing Plan). Public Improvements shall be designed and constructed, and shall contain those improvements and facilities, as reasonably required by the applicable City Agency that is to accept, and in some cases operate and maintain, the Public Improvement in keeping with the then-current citywide standards and requirements of the City Agency as if it were to design and construct the Public Improvement on its own at that time, subject to such exceptions and non-standard elements or

features set forth in the Infrastructure Design Exceptions Memo, or as otherwise approved by Public Works or the applicable City Agency in accordance with this Agreement and the Subdivision Code. Without limiting the foregoing, Developer shall complete all Public Improvements and Privately-Owned Community Improvements in accordance with the applicable Plan Documents, and in a good and workperson-like manner, without material defects, in accordance with City-approved construction documents. Before the start of work on any Public Improvements, Developer shall enter into a Public Improvement Agreement with Public Works, and provide adequate security consistent with the Subdivision Code and the applicable Public Improvement Agreement (which may include bonds, letters of credit or other security satisfactory to the City and meeting the requirements of the Subdivision Code).

3.6.2 Regulatory Approvals. Developer shall obtain all necessary permits and approvals (including approval of all design and construction plans) from any responsible agencies having jurisdiction over each Public Improvement and Privately-Owned Community Improvement. Without limiting the foregoing, (i) the SFMTA must approve all of the plans and specifications for Public Improvements that are under SFMTA jurisdiction as provided in the SFMTA Consent, (ii) the SFPUC must approve all of the plans and specifications for the SFPUC Infrastructure and all Stormwater Management Improvements as provided in the SFPUC Consent, and (iii) Public Works must approve all of the plans and specifications for all streets and sidewalks and improvements in the Public ROWs. In deciding whether to approve, conditionally approve, or deny, each City Agency is subject to the requirements of the Plan Documents and this Agreement, including Sections 5.3 and 5.5.

3.6.3 Timing for Completion of Public Improvements and Privately-Owned Community Improvements. All Public Improvements that are required to serve a new Building within the applicable Development Phase must be Completed and accepted by action of the Board of Supervisors on or before issuance of the First Certificate of Occupancy for that Building unless Developer requests a deferral in writing and the Public Works Director, in his or her reasonable discretion, approves the deferral in writing. The Parties agree to work in good faith to enter into such agreements as may be needed to ensure that City's process for acceptance of Public Improvements does not delay the issuance of Certificates of Occupancy when the Public Infrastructure is Completed and ready for its intended use. Privately Owned Community Improvements and all Parks and Open Spaces expressly identified in the Phasing Plan must be Completed in accordance with the times for Completion set forth in the Phasing Plan. If Developer fails to complete the applicable Public Improvements or Privately-Owned Community Improvements within such time frame, the City may decide not to issue a certificate of occupancy or Later Approval in accordance with Section 9.4.4.

3.6.4 Dedication and Acceptance of Public Improvements. Developer shall provide the City with an offer of dedication for all Public Improvements, with fee title to public right of way (or an easement, if acceptable to the City), within the Development Phase in accordance with the Subdivision Code, and the applicable Public Improvements Agreement and Subdivision Map conditions of approval. At any time after Completion, Developer shall make a written request to the City to initiate acceptance of such Public Improvements in accordance with the Subdivision Code, the Public Improvements Agreement, and this Agreement, including, but not limited to, the Infrastructure Design Exceptions Memo. With any such request, Developer shall satisfy all prerequisites and conditions to acceptance and submit all needed materials

associated with the request. Following Developer's submittal of all required materials, each applicable City Agency having jurisdiction will diligently and expeditiously process the acceptance request and introduce complete acceptance packages to the Board of Supervisors.

Section 3.7 Contracting for Public Improvements. In connection with all of the Public Improvements, Developer shall engage a contractor that is duly licensed in California and qualified to complete the work (the "**Contractor**"). The Contractor shall contract directly with Developer pursuant to an agreement to be entered into by Developer and Contractor (the "**Construction Contract**"), which shall: (i) be a guaranteed maximum price contract; (ii) require contractor to maintain bonds and insurance for the benefit of Developer and the City in accordance with the Subdivision Code; (iii) require the Contractor to obtain and maintain customary insurance, including workers compensation in statutory amounts, Employer's liability, general liability, and builders all-risk; (iv) release the City from any and all claims relating to the construction, including but not limited to mechanics liens and stop notices; (v) subject to the rights of any Mortgagee that forecloses on the property, include the City as a third party beneficiary, with all rights to rely on the work, receive the benefit of all warranties, and prospectively assume Developer's obligations and enforce the terms and conditions of the Construction Contract as if the City were an original party thereto; and (vi) require that the City be included as a third party beneficiary, with all rights to rely on the work product, receive the benefit of all warranties and covenants, and prospectively assume Contractor's rights in the event of any termination of the Construction Contract, relative to all work performed by the Project's architect and engineer.

Section 3.8 Maintenance and Operation of Public Improvements by Developer and Successors. Ongoing Maintenance Services of the Maintained Facilities will be paid by Services Special Taxes from the CFD in accordance with the Financing Plan.

Section 3.9 Maintenance and Operation of Privately-Owned Community Improvements. Developer or its Transferee shall own, operate and maintain in good and workmanlike condition, and otherwise in accordance with all applicable laws and any applicable permits, at no cost to City, all Privately-Owned Community Improvements except for the Transitional Open Spaces, which shall be maintained as Maintained Facilities under the Financing Plan. At a minimum, all Privately-Owned Community Improvements shall be maintained in accordance with the requirements of the Planning Code section 138.[or Exhibit In order to ensure that all such Privately-Owned Community Improvements (other than the Transitional Open Spaces) are maintained as required, Developer shall record a declaration of covenants, conditions, and restrictions in a form approved by the Planning Director and the City Attorney ("**CC&Rs**") against the residential lots within the Project Site but excluding any sites that are intended for dedication to the City, that requires the master homeowner's association ("**Master HOA**") to maintain and repair such Privately-Owned Community Improvements in perpetuity, with appropriate homeowners' dues to provide the necessary funding. The CC&Rs may be recorded against lots within the Project Site in phases, but in each instance before commencement of construction of the applicable Buildings. Notwithstanding anything to the contrary contained in any Master HOA governing document, Developer or its Transferee shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the Master HOA during the Term. The CC&Rs shall expressly provide the City with the right to enforce the maintenance and repair provisions of the CC&Rs.

Section 3.10 Maintenance of Stormwater Management Improvements. Under the Infrastructure Plan and the Public Works Code, the SFPUC must approve a Stormwater Control Plan that describes the activities required by Developer to appropriately design, install, and maintain the Stormwater Management Improvements within each Development Phase. Upon Completion, the City will accept the Stormwater Management Improvements identified for City acceptance in the Maintenance Matrix attached to the Financing Plan, and will use CFD funds for ongoing maintenance. The remaining Stormwater Management Improvements, such as drainage swales on private property, will be maintained by the private property owner and, if applicable, the Master HOA. Any stormwater improvements that will convey private stormwater to public stormwater systems will be subject to an agreement with the SFPUC that addresses proper maintenance and SFPUC inspection and enforcement.

Section 3.11 Non-City Regulatory Approvals for Stormwater Management Improvements and Public Improvements. The Parties acknowledge that certain Stormwater Management Improvements, Public Improvements and Privately-Owned Community Improvements, most particularly the proposed outfall of stormwater from the Project Site to the Bay and in water construction, require the approval of federal and state governmental agencies that are independent of the City and not a Party to this Agreement (“**Non-City Responsible Agencies**”). The Non-City Responsible Agencies may, at their sole discretion, disapprove installation of such Stormwater Management Improvements or Public Improvements, making such installation impossible. The City will cooperate with reasonable requests by Developer to obtain permits, agreements, or entitlements from Non-City Responsible Agencies for each such improvement, and as may be necessary or desirable to effectuate and implement development of the Project in accordance with the Approvals (each, a “**Non-City Regulatory Approval**”). The City's commitment to Developer under this Section 3.11 is subject to the following conditions:

- (a) Throughout the permit process for any Non-City Regulatory Approval, Developer shall consult and coordinate with each affected City Agency in Developer's efforts to obtain the Non-City Regulatory Approval, and each such City Agency shall cooperate reasonably with Developer in Developer's efforts to obtain the Non-City Regulatory Approval;
- (b) Developer shall not agree to conditions or restrictions in any Non-City Regulatory Approval that could create: (1) any obligations on the part of any City Agency, unless the City Agency agrees to assume such obligations at the time of acceptance of the Public Improvements; or (2) any restrictions on City-owned property (or property to be owned by City under this Agreement), unless in each instance the City, including each affected City Agency, has previously approved the conditions or restrictions in writing, which approval may be given or withheld in its sole discretion; and
- (c) Developer shall bear all costs associated with applying for, obtaining, and complying with any necessary Non-City Regulatory Approval, and any and all conditions or restrictions imposed as part of a Non-City Regulatory Approval. Developer shall pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-City Regulatory Approval.

Section 3.12 Continuing City Obligations. Certain Non-City Regulatory Approvals may include conditions that entail special maintenance or other obligations that continue after the City accepts the dedication of Public Improvements (each, a “**Continuing Obligation**”). Standard maintenance of Public Improvements, in keeping with City’s existing practices, shall not be deemed a Continuing Obligation. Developer must notify all affected City Agencies in writing and include a clear description of any Continuing Obligation, and each affected City Agency must approve the Continuing Obligation in writing in its sole discretion before Developer agrees to the Non-City Regulatory Approval and the Continuing Obligation. Upon the City’s acceptance of any Public Improvements that has a Continuing Obligation that was approved by the City as set forth above, the City will assume the Continuing Obligation and notify the Non-City Responsible Agency that gave the applicable Non-City Regulatory Approval of this fact.

Section 3.13 Public Financing.

3.13.1 Financing Districts. Developer and City agree to form a CFD under the CFD Act to finance Qualified Project Costs, Additional Community Facilities, and Ongoing Maintenance Services, as described in the Financing Plan. The City agrees not to (i) initiate proceedings for any new or increased special tax or special assessment that is targeted or directed at the Project Site except as provided in the Financing Plan, or (ii) take any other action that is inconsistent with the Financing Plan without Developer’s consent. Any and all costs incurred by the City in forming a CFD shall be City Costs. The terms and conditions of any CFD must be consistent with the specifications in the Financing Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the CFDs or the issuance of additional bonds or other financing secured by Project Special Taxes, or the application of bond proceeds or Project Special Taxes. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Project Special Taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in the Master CC&Rs (or, if the Master CC&Rs have not yet been created and recorded, in the sale documents for any sale of all or part of the Property).

3.13.2 Limitation on New Districts. The City will not form any new financing or assessment district over any portion of the Project Site unless the new district applies to similarly-situated property City-Wide or Developer gives its prior written consent to or requests the proceedings.

3.13.3 Permitted Assessments. Nothing in this Development Agreement limits the City’s ability to impose new or increased taxes or special assessments, any equivalent or substitute tax or assessment, or assessments for the benefit of business improvement districts or community benefit districts formed by a vote of the affected property owners.

Section 3.14 Public Power. The SFPUC shall promptly prepare a study to determine the feasibility of providing electric service and natural gas to the Project Site (the “**Feasibility Study**”), which shall be completed within 6 months after the date that Developer provides to the SFPUC all Project information needed to complete the Feasibility Study (which Developer agrees to do within forty-five (45) days following the Effective Date). Developer understands and agrees that electricity and/or natural gas for the Project Site will be provided by Hetch

Hetchy Water and Power or other City sources, so long as the Feasibility Study shows that the SFPUC can provide service to meet the Project's needs and that the projected price for electrical service is comparable to rates in San Francisco for comparable service. Upon the SFPUC's commitment to be the power provider at comparable rates, Developer and the SFPUC will enter into a service agreement and Developer will purchase power from the PUC for so long as the PUC continues to provide power to the Project Site.

Section 3.15 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.

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

Section 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 the construction of each of the Development Phases and/or commercial and residential development as described in the Phasing Plan and the Plan Documents, including the Public Improvements, Privately-Owned Community Improvements and the affordable housing under the Housing Plan (each, an "**Associated Community Benefit**"). The timing for delivery of the Associated Community Benefits will be governed as described in this Agreement and in each applicable Plan Document, provided the obligation to Complete the Associated Community Benefit in each Development Phase will arise when Developer obtains its First Construction Permit for Infrastructure within that Development Phase and will survive until the Associated Community Benefit is Completed. Time is of the essence with respect to the Completion of all Associated Community Benefits.

4.1.1 Associated Community Benefits. Developer shall provide the Associated Community Benefits identified in the following attachments to the Development Agreement (collectively, the "**Community Benefit Programs**"):

- (a) the Infrastructure Plan (including all of the Public Improvements and the Privately-Owned Community Improvements);
- (b) the Parks and Open Space Plan;
- (c) the Housing Plan;

- (d) the Transportation Plan; and
- (e) the Workforce Agreement.

Section 4.2 Conditions to Performance of Associated Community Benefits. Except to the extent expressly stated otherwise in an applicable Plan Document, 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 Development Phase 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 Development Phase 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; and
- (c) Developer shall have Commenced Construction of the Development Phase to which the Associated Community Benefit applies.

Whenever this Agreement requires completion of an Associated Community Benefit at or before a specified date or milestone, and that date or milestone is passed without completion of the Associated Community Benefit, the City may withhold certificates of occupancy and Later Approvals in accordance with Section 9.4.4.

Section 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.

4.3.2 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 in the MMRP as the responsibility of the “owner” or the “project sponsor”, but not with Mitigation Measures identified in the MMRP as the obligation of “RPD” or the “City”. 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. To the extent necessary, Developer shall incorporate the requirements of the MMRP into any sale of all or part of the land to any vertical developer. Nothing in this Agreement shall 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, or the ability of the City to impose conditions on any discretionary actions relating to a Material Change, including conditions determined by the City to be necessary to mitigate adverse environmental impacts.

4.3.3 Sidewalks and Streets. By entering into this Agreement, the City’s Board of Supervisors and the City Agencies have reviewed and approved the sidewalk, street and alley widths, and general right of way configurations with respect to location and relationship of major elements, including curbs, bicycle facilities, parking, loading areas, and landscaping, as set forth in the Infrastructure Plan, including without limitation the Infrastructure Design Exceptions Memo, and the Design Guidelines, as consistent with the City’s central policy objective to ensure street safety for all users while maintaining adequate clearances, including for fire apparatus vehicles. If any City Agency with jurisdiction objects to a Later Approval for any Building or any Infrastructure based upon the proposed width of a sidewalk, street or alley for reasons other than solely engineering design or authority granted under State law, then within five (5) business days of the objection being raised (whether raised formally or informally), representatives from Developer, Public Works, the Planning Department and the objecting City Agency shall meet and confer in good faith to attempt to find a mutually satisfactory resolution to the objection that does not conflict with City policy, including the City’s Better Streets Plan, any applicable streetscape plan, the Approvals or this Agreement, including without limitation the Infrastructure Design Exceptions Memo. If the matter is not resolved within fourteen (14) days following the objection, then the Planning Director shall notify the Clerk of the Board of Supervisors and the members of the Board of Supervisors’ Land Use and Transportation Committee. The City Agencies and Developer agree to act in good faith to resolve the matter quickly and in a manner that does not conflict with City policy, the Approvals, this Agreement or applicable law. For purposes of this Section, “engineering design” shall mean professional engineering work as set forth in the Professional Engineers Act, California Business and Professions Code sections 6700 et seq.

Section 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.

Section 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 (Fees and Extractions).

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 twelve (12) 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 twelve (12) 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.

Section 4.6 Prevailing Wages and Working Conditions. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms “public work” and “paid for in whole or part out of public funds” are defined in and subject to exclusions and further conditions under California Labor Code sections 1720-1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all workers performing labor in the construction of public works (including the Public Improvements) under this Agreement will be: (1) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), (2) provided the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County in Administrative Code section 6.22(f), and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. City’s Office of Labor Standards Enforcement (“**OLSE**”) enforces labor laws, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

Section 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 Applicable Laws, including Existing Standards, (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, (vii) any claim relating to the Public Trust Exchange Agreement, including any claim by the State against the City relating to the condition of the property transferred to the State, and (viii) 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.

ARTICLE 5 VESTING AND CITY OBLIGATIONS

Section 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 and parcelization, 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.

Section 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, (iii) 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 (New City Laws), (iii) California and federal law, as applicable, and (iv) this Agreement, including the Plans (collectively, “**Applicable Laws**”). The Enacting Ordinance contains express waivers and amendments to Chapter 56 consistent with this Development Agreement.

5.2.1 No Implied Waiver of Codes. Nothing in this Agreement, including the Infrastructure Plan, constitutes an implied waiver or exemption of the Subdivision Code or the Public Works Code. Any waiver or exemption from these codes must be specifically identified in a memorandum attached to the Infrastructure Plan (the “**Infrastructure Design Exceptions Memo**”). The Infrastructure Design Exceptions Memo must: (i) identify the applicable section of the Code, (ii) identify the specific project component necessitating the waiver or exemption, including how it will not comply with the Code, (iii) identify the portions of the Infrastructure Plan discussing such project component, and (iv) provide an explanation for the waiver or exemption. To the extent of there is a conflict between the Subdivision Code or the Public Works Code and any drawing or text in the Infrastructure Plan, the Code section shall control (subject to the vesting provisions of this Agreement) except as specified in the Infrastructure Design Exceptions Memo. For any waiver or exemption not specifically identified in the Infrastructure Design Exceptions Memo, Developer shall comply with the City’s existing processes to seek any necessary waivers or exemptions. The City’s failure to enforce any part of the Subdivision Code or Public Works Code shall not be deemed a waiver of its right to do so thereafter, but it shall not override the Approvals standards set forth in Sections 3.2.6, 5.2 and 5.3.

Section 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, or impose new conditions that conflict with the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Municipal Code, the Approvals and otherwise in accordance with City's customary practice (but subject to the requirements of this Agreement). 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.

Section 5.4 Strict Building Code Compliance.

5.4.1 City-Wide Building Codes. Except as otherwise provided in Section 5.4.2 and Section 4.3.3, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations (including any applicable exceptions) that are contained in the San Francisco Building Codes, including the Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, or other uniform construction codes applicable on a City-Wide basis.

5.4.2 Applicability of Utility Infrastructure Standards. Nothing in this Development Agreement will preclude the City from applying then-current standards and City Laws for Utility Infrastructure for each Later Approval so long as: (i) the standards for Utility Infrastructure as applied, City-Wide, are compatible with, and would not require the retrofit, material modification, removal, supplementation, reconstruction or redesign of, plans previously approved for the work, and (ii) the deviations do not require any retrofit, material modification, removal, supplementation, reconstruction or redesign of what was previously built as part of the Project. If Developer claims that the City's request for changes to design or construction documents violates the preceding sentence, it will submit to the City reasonable documentation to substantiate its claim, including bids, cost estimates, or other supporting documentation. The Parties agree to meet and confer for a period of not less than 30 days to resolve any dispute regarding application of this Section. If the Parties do not agree following the meet and confer period, Developer may seek judicial relief for any City violation of the limitations imposed by this Section.

Section 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.

Section 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 (Changes in Federal or State Laws). All references to any part of the Municipal Code in this Agreement shall mean that part of the Municipal Code (including the Administrative Code) in effect on the Effective Date, with such changes and updates as are adopted from time to time, except for any changes or updates that conflict with this Agreement as set forth in Section 5.6.1.

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 (including the number of residential dwelling units) 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 permitted as part of the Project under the Approvals;

(c) limit, reduce or change the amounts of parking and loading spaces or 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) except as provided in this Agreement, limit, control or delay in more than an insignificant manner the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of the Project, including the demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(f) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for (i) permits or approvals required on a City-Wide basis that relate to construction of improvements and do not prevent construction of the Project as intended by this Agreement, and (ii) permits that replace (but don't expand the scope or purpose of) existing permits;

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

(h) impose any ordinance, resolution or regulation that controls commercial or residential rents or purchase prices charged within the Project or on the Project Site, except as such imposition is expressly required by this Agreement;

(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, finishes or unit type, control or limit home owner association or common area dues or amenity charges, or increase the amount or change the configuration of required open space; or

(k) impose new or modified Impact Fees and Exactions other than as permitted under Section 5.7 (Fees and Exactions).

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, reconfigure or merge parcels within the Project Site as required to complete the Project before starting construction of the Project. 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, Applicable Law or with the Approvals.

5.6.3 Developer may elect to have a Future Change to Existing Standards that conflicts with this Agreement applied to the Project or the Project Site (or in the case of a Transferee, to the portion of the Project site owned by the Transferee) by giving the City written notice of its election to have a Future Change to Existing Standards applied, in which case such Future Change to Existing Standards shall be deemed to be an Existing Standard as to the Project or portion of the Project Site, as applicable; provided, however, that if the application of the Future Change to Existing Standards would be a Material Change to the City's obligations under this Agreement, the application of the Future Change to Existing Standards will require the concurrence of any affected City Agencies.

Section 5.7 Impact 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 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 fees or exactions 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 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 first fifteen (15) years of the Term, as extended by a Litigation Extension (if any)(the “**15 Year Period**”), (1) the only Impact Fees and Exactions that will apply to the Project will be the Impact Fees and Exactions listed on Exhibit T (the “**Applicable Impacts Fees and Exactions**”), and (2) the rates of the Applicable Impact Fees and Exactions as applied will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid (the “**Annual Adjustment**”). During the First Extended Term, Developer shall be subject to all increases in the rates of the Applicable Impact Fees and Exactions to the extent that such increases are applied City-Wide; provided, however, that any such increases shall be limited to the lesser of (x) a 10% increase from the applicable rate in place the immediately preceding year, and (y) the rate otherwise generally applicable based on then current City standards. During the First Extended Term, Developer shall also be subject to any new development impact fee that applies to the Project so long as the new fee is (A) generally applicable on a City-Wide Basis for similar land uses, and (B) not redundant of a fee, dedication, or requirement that is imposed under this Agreement; i.e., any fee, dedication, or requirement related to affordable housing, open space, transportation, child care, or sea-level rise. During the Second Extended Term, all Impact Fees and Exactions in effect at the time of assessment shall apply to any development on the Project Site.

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.

Section 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. If the Parties are not able to reach agreement on such dispute following a reasonable meet and confer period, then Developer or City may seek judicial relief with respect to the matter.

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 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 sixty (60) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in sixty (60) 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.

Section 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.

Section 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 8.1 (Annual Review). 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.

Section 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 Article 5 (Vesting and City Obligations). 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.

Section 5.12 Costa-Hawkins Rental Housing Act.

5.12.1 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)). Based upon the language of the Costa-Hawkins Act and the terms of this Agreement, 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. 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 as a result of the exemption set forth in California Civil Code section 1954.52(b) for the reasons set forth in Section 5.12.

5.12.2 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 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 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 this Agreement as to the portion of the Project under the ownership or control of Developer.

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

Section 5.13 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 or initiate proceedings for any new or increased special tax or special assessment for a land-secured financing district (excluding the Project Special Taxes under the CFD Act contemplated by this Agreement and excluding 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, (ii) Developer and the City shall not take any other action that is inconsistent with the Financing Plan without the other Party's consent, 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.

ARTICLE 6 NO DEVELOPMENT OBLIGATION

Section 6.1 No Development Obligation. There is no requirement that Developer initiate or complete development of the Project, subject to the requirement to provide the Associated Community Benefits (including the Public Improvements and the Privately-Owned Community Improvements) in accordance with this Agreement if Developer elects to Commence Construction and pursue to Completion a particular Development Phase. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirements relating to the Associated Community Benefits. 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. Accordingly, the Parties agree that except for the construction phasing required by Section 3.2, the Plan Documents (including deadlines for the completion of Associated Community Benefits), the Phasing Plan, the Mitigation Measures, and any express construction dates set forth in a Later Approval, (i) Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, and (ii) that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement. Notwithstanding the above, the City retains authority to reject any Developer request for temporary or interim Public Improvement or deferral of the construction of the permanent Public Improvement, and can require permanent Public Improvements with each Development Phase.

Section 6.2 Real Estate Transfers. Upon Developer's request, the City will vacate the streets shown on Exhibit T and transfer fee title to such streets to Developer upon satisfaction of all conditions for vacation and transfer, including Board of Supervisor approval of the vacation as required under the Subdivision Code and any City's receipt of any payments due under Section 6.3. In connection with the Trust Exchange, Developer shall transfer certain real property to the City as generally shown on Exhibit U. The City shall also have the right to accept from Developer temporary or permanent easements, as needed, in a form approved by the applicable City Agency and the City Attorney, for utility lines to be owned by the City. In addition, upon completion of the Public Infrastructure on Developer-owned property that will be owned, maintained and operated by the City, Developer shall transfer fee title to the underlying real property to the City when required under the applicable Public Improvement Agreement. Developer shall prepare all maps and legal descriptions as required to effectuate the proposed real estate transfers subject to the approval of the Director of Property (and, where applicable, the Public Works Director), which will not be unreasonably withheld. Following satisfaction of all conditions to closing, including the vacation and abandonment of any public rights and the relocation of any utilities in such real property, the City shall convey any real property to Developer, by quitclaim deed in the form attached as Exhibit V and Developer shall convey any real property to the City by grant deed in the form attached as Exhibit W. Developer shall accept any City property strictly in its "as is" condition, without representation or warranty, and releases the City from any liability relating to the condition of the Property. Each Party shall have the right to perform physical, title and other customary due diligence before accepting title to exchanged land, and shall have the right to object to the condition of the property, including the environmental condition, in its sole discretion. It shall be a condition precedent to the City's acceptance of any real property that the City obtain title insurance, at Developer's sole cost, in form and from an issuer reasonably acceptable to City in the amount of the fair market value of the land. Developer shall have the right, but not the obligation, to obtain title insurance for the real property that it accepts at Developer's sole cost. If the accepting Party objects to the condition of the real property, including any title exceptions, then the Parties shall meet and confer for a period of thirty (30) days, or such longer period as may be agreed to by the Parties,

to try to reach a reasonable resolution. It is the Parties' intent that Developer shall pay all reasonable costs of remedying any objectionable property condition. If the Parties are not able to reach resolution, then neither Party shall be required to complete the real property transfer.

Section 6.3 Potential Payments for Real Property; Indemnification. If any real property exchange under this Agreement results in a net loss of acreage for the City (not including any submerged lands), then Developer shall pay to the City the fair market value of the real property loss at the time of transfer based on the then-current use of the property so transferred, as determined by appraisal and approved by City's Director of Property. The City shall not be required to pay for any net gain in real property; provided, however, such gain can be applied against future real property transfers for purposes of determining whether there has been a net loss as described above; provided, further, that any such gain shall be considered an Associated Community Benefit. Notwithstanding any such credit against future transfers, the City will not be required to reimburse any payments made for real property in connection with a previous transfer. Developer shall Indemnify the City against any and all Losses relating to real property conveyed by Developer to City under this Agreement, including but not limited to any Loss relating to the presence of hazardous materials in or on the real property at the time of transfer to the City.

Section 6.4 Street Vacations. The Parties acknowledge that all applicable City agencies having jurisdiction have reviewed and approved the proposed street vacation actions as shown on Exhibit T. As a result, the City hereby waives any requirement that the proposed street vacations obtain review and recommendation by the City's interdepartmental Transportation Advisory Staff Committee (TASC). [*confirm*]

Section 6.5 Public Trust. To effectuate the planned reconfiguration of lands within the Project Site that are or may be held subject to the public trust for commerce, navigation, and fishery (the "**Public Trust**"), the City, acting through the Port, RPD, and the Director of Real Estate, and Developer agree to enter into a separate title settlement, public trust exchange and boundary line agreement with the California State Lands Commission ("**State Lands**") substantially in the form attached as Exhibit X (the "**Public Trust Exchange Agreement**"). The Public Trust Exchange Agreement provides that the Public Trust exchange as described therein (the "**Public Trust Exchange**") shall occur in one phase upon the satisfaction of certain conditions. A map showing the areas that will be removed from the Public Trust and the areas that will become subject to the Public Trust as part of the Public Trust Exchange is attached to the Public Trust Exchange Agreement. The City cannot transfer any lands that are (or may be) presently subject to the Public Trust until the Public Trust is removed from the land under the Exchange Agreement. The City and Developer shall each use reasonable efforts to satisfy the conditions and diligently and timely complete the Public Trust Exchange under the Public Trust Exchange Agreement to achieve a configuration of Public Trust and non-Public Trust lands substantially similar to that set forth in the Public Trust Exchange Agreement as and when needed to enable Developer to develop the Project, provided before closing (i) each Party shall have approved the condition of title and the condition of the real property as set forth in Section 6.2, (ii) the Port and RPD shall have entered into an MOU that defines the roles and responsibilities of each with respect to the lands subject to the Public Trust, and (iii) Developer shall have obtained its first Development Phase Approval. Developer shall initiate and complete, at no cost to the City, all mapping and legal descriptions and take such additional actions as may

be needed to effectuate the Public Trust Exchange. At the Trust Exchange closing, the City shall record an open space covenant in the form of Exhibit M to ensure RPD operation and management for park and open space uses of those portions of the India Basin Open Space and Big Green to be exchanged into the Public Trust and placed under Port jurisdiction. The Parties acknowledge that, in accordance with the Public Trust Exchange Agreement, the governing body of State Lands (the State Lands Commission) must approve the Public Trust Exchange Agreement and certain conditions required by the Exchange Act must be satisfied before closing. Neither Developer nor the City shall engage in any activities that would be reasonably expected to jeopardize the parties' ability to satisfy the conditions for closing as set forth in the Exchange Act or the Public Trust Exchange Agreement. The City shall not be required to complete the Public Trust Exchange if Developer is in Default, or has not completed all mapping, surveys and legal descriptions necessary, or has not paid or committed to pay all costs required to effectuate the closing.

ARTICLE 7 MUTUAL OBLIGATIONS

Section 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 one or more Development Phases and all of the Associated Community Benefits and Infrastructure tied to those Development Phases have been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit Y for the applicable property.

Section 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.

7.2.1 Specific Actions by the City. The City actions and proceedings subject to this Agreement shall be through the Planning Department, and/or the affected City Agencies (and when required by applicable Law, the Board of Supervisors), and shall include instituting and completing proceedings for temporary or permanent closing or occupancy, widening, modifying or changing the grades of streets and other necessary modifications of the streets, the street layout, and other public or private rights-of-way, including streetscape improvements, encroachment permits, improvement permits, and any requirement to abandon, remove, and relocate public utilities (and, when applicable, City utilities) as identified in the Approvals and Later Approvals.

7.2.2 Role of Planning Department and RPD. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for Later Approvals relating to development of the Project on the Developer Property, and RPD will act as the City's lead agency to facilitate coordinated City review of applications for Later Approvals relating to development of the Project on the India Basin Open Space and Big Green. As such, Planning Department and RPD staff will, as applicable: (i) work with Developer to ensure that all such applications are technically sufficient and constitute complete applications and (ii) interface with City Agency staff responsible for reviewing any application under this Agreement to ensure that City Agency review of such applications are concurrent and that the approval process is efficient and orderly and avoids redundancies. Public Works shall be the City's lead agency for all actions subject to the Subdivision Map Act.

7.2.3 City Agencies.

(a) Review of Applications. Developer will submit each application for Later Approvals, including Design Review Applications and applications for the design and construction of Public Improvements (including Parks and Open Spaces) and Mitigation Measures, to the applicable City Agencies. Each City Agency, including the Port, PUC, SFMTA, SFFD, Public Works, and MOHCD, will process expeditiously and with due diligence all submissions, applications and requests by Developer for Later Approvals, including all permits, approvals, agreements, plans, and other actions that are necessary to implement the Project. Each City Agency will review submittals made to it for consistency with this Agreement, and will use good faith efforts to coordinate with any other applicable City Agency to determine completeness within thirty (30) days and to provide comments and make recommendations to Developer within sixty (60) days of the City Agency's receipt of the complete application. If the City Agency disapproves an application and Developer subsequently resubmits, the City Agency, will have an additional 30 days for review from receipt of the resubmittal (which period will include consultation with other City Agencies to the extent requested by the City Agency). This procedure will continue until the City Agency approves the amended application.

(b) Review Standards. In considering any application, the City Agencies (i) will not impose requirements or conditions that are inconsistent with this Agreement, or impose new conditions that conflict with the Development Agreement, including any Plan Document or Approval, and (ii) will not disapprove the application or require any revisions to any application based on items that conform to and are consistent with this Agreement, including the Infrastructure Design Exceptions Memo. Any City Agency denial of an application shall include a statement of the reasons for such denial. Developer will work collaboratively with the City Agencies to ensure that such application is discussed as early in the review process as possible and that Developer and the City Agencies act in concert with respect to these matters.

Section 7.3 Third Party Challenges. In the event of any Third-Party Challenge, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City. 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 incurred 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*, (i) Developer shall have the right to receive monthly invoices for all such costs, and (ii) Developer may elect to terminate this Agreement, and the Parties will thereafter seek to have the Third-Party Challenge dismissed. Developer shall have no obligation to reimburse any City costs incurred after the date of dismissal. 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.

Section 7.4 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Later Approvals. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement, including such actions as may be necessary to satisfy or effectuate any applicable conditions precedent to the performance of the Community Benefits.

Section 7.5 Permits to Enter City Property. Subject to the rights of any third party, the rights of the public and the City's reasonable agreement on the scope of the proposed work and insurance and security requirements, RPD or the Director of Property, as applicable, shall grant permits to enter City-owned property under their respective jurisdiction, including the Big Green, in the form attached as Exhibit Z, including, without limitation, provisions regarding release, waivers and indemnification in keeping with the City's standard practices, so long as the same is consistent with Applicable Law, and otherwise on commercially reasonable terms, in order to permit Developer to enter City-owned property as necessary to construct the Project or comply with or implement the Approvals or other requirements in this Agreement.

Section 7.6 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.

ARTICLE 8 PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

Section 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.

Section 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 forty (40) 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 that the Developer has not complied with the terms and conditions of 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 Section 8.2 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, but there can be no more than one master Developer/Transferee for each Development Phase. If portions of the Project Site are divided within a Development Phase to more than one Developer, then the Developers within the Development Phase shall jointly submit the materials required by this Article 8 and the City review process will proceed as one for the whole Development Phase. Notwithstanding the foregoing, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to each 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 an individual Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party (and its Affiliates) as to whom the determination is made and the portions of the Project Site in which such Party (and its Affiliates) has an interest. In other words, even when the review process is bundled for multiple Developers/Transferees in a Development Phase, any action

determination of noncompliance or default will be made only against the defaulting Party (and its Affiliates).

8.2.4 Default. The rights and powers of the City under 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.

ARTICLE 9 ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

Section 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.

Section 9.2 Meet and Confer Process; Non-Binding Arbitration. 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) business days, to respond to or cure such alleged failure. If the Parties cannot resolve the issue in ten (10) 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. The meet and confer and non-binding arbitration 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 9.2 and may proceed in accordance with the issuance of a notice of default under Section 9.3

Section 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, if a Transferee Defaults, it shall not be

a Default by any other Transferee or Party that owns a different portion of the Project Site; provided, a Developer may be impacted by another Developer's Default based on City's right to withhold certificates of occupancy and Later Approvals as set forth in Section 9.4.2. For purposes of this Article 9, a Party shall include all of its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any termination or other remedy against that Party may include the same remedy against all such Affiliates.

Section 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, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, 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 ninety (90) 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 together with its Affiliates; provided, the foregoing will not limit the City's right to withhold certificates of occupancy or Later Approvals to non-defaulting Developer when (i) the Interim Requirements for affordable housing are not met by an Interim Measurement Date as set forth in the Affordable Housing Plan, or (ii) the Big Green and India Basin Open Space parks are not Completed when required under paragraph 3.7 of the Phasing Plan. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

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, but subject to any express conditions for such payment set forth in 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 (less any amounts actually collected by the City in exercising rights to security held by the City), (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 certificates of occupancy for a Building or to withhold issuance of Later Approvals in a Development Phase if an Associated Community Benefit within that Development Phase is not completed when required under this Agreement unless Developer provides adequate security for such completion, as determined by the Planning Director (or, for Public Improvements, as determined by the Public Works Director) following consultation with the City Attorney; provided that City shall have the right to withhold issuance of certificates of occupancy or Later Approvals on a Project-wide basis as set forth in Section 9.4.2. Nothing in the foregoing limits City’s rights and remedies under this Agreement for Default if Developer fails to initiate a cure and diligently prosecute such cure to completion.

Section 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.

Section 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.

ARTICLE 10 FINANCING; RIGHTS OF MORTGAGEES

Section 10.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that the only Mortgage on the Project Site is for the benefit of _____. [*need consent and subordination from mortgagee to recorded*]

Section 10.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section 10.2 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, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 4.1. Nothing in this Section 10.2 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, nothing in this Section 10.2 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 complete improvements that have already begun) unless or until such person or entity assumes Developer's obligations under this Agreement.

Section 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 10.3 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.

Section 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) ninety (90) days to cure a monetary Default; and (b) one hundred eighty (180) days to commence to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property and thereafter diligently pursue to completion. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

Section 10.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits if and to the extent required 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.

Section 10.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

Section 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.

ARTICLE 11 AMENDMENT; TERMINATION; EXTENSION OF TERM

Section 11.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided 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, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department). The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the Planning Director following consultation with the City Attorney and any affected City Agency.

Section 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 that is eight (8) years following the Effective Date, as extended by Litigation Delay.

Section 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.

Section 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, together with each affected City Agency, shall have the right to approve changes to the Project, including the Plan Documents, 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. Any such change or update to the Plan Documents shall be maintained on file with the Planning Department. If the Parties fail to amend this Agreement as set forth above when required (*i.e.*, when there is a Material Change), 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.

Section 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 or any Later Approvals), 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. In the event of an Excusable Delay, the Parties agree to extend the time periods for performance of Developer’s obligations impacted by the Excusable Delay. “**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 Extension; 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 and any administrative appeals of such permits, authorizations, consents or approvals. 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.

ARTICLE 12

TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

Section 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 (i) 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 (the “**Transferred Property**”), and (ii) there shall not be more than one Developer in an approved Development Phase that assumes responsibility for completion of the Public Improvements in that Development Phase (including the portions of the Big Green and the India Basin Open Space to be completed in that Development Phase but excluding the Transferable Infrastructure intended for completion with Vertical Improvements). 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 Development Parcel shall be either (i) 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) or (ii) the sole responsibility of the Developer, as set forth in a Development Phase Approval; provided, however, that (A) 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, and (B) each Developer must, on its own, satisfy the requirements of the Workforce Agreement as applied to its portion of the Project. Multiple Developers must coordinate on the housing data tables and maps as set forth in the Affordable Housing Plan and on the annual review process in Article 8.

Section 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 AA (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.

Section 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), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, except for obligations retained by the assignor 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. Subject to the City's rights under Section 9.4.2, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site.

Section 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, including any obligation retained by Developer to complete affordable housing or parks and City's Project-wide rights under Section 9.4.2, 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, affordable housing, or certain parks 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, the affordable housing, or the completion of the park is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, the Housing Plan and the Phasing Plan, and Developer and all Transferees assume this risk.

Section 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.

Section 12.6 Rights of Developer. The provisions in this Article 12 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage.

ARTICLE 13 DEVELOPER REPRESENTATIONS AND WARRANTIES

Section 13.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a _____ limited liability company, duly organized and validly existing and in good standing under the Laws of the State of 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.

Section 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.

Section 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.

Section 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.

Section 13.5 Other Documents. To the current actual knowledge of _____ and _____, 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.

Section 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.

ARTICLE 14 MISCELLANEOUS PROVISIONS

Section 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.

Section 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.

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

running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

Section 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.

Section 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.

Section 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. If there is more than one entity that comprises Developer, the obligations and liabilities under this Agreement imposed on each member or entity that comprises Developer shall be joint and several.

Section 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.

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

Section 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.

Section 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.

Section 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, India Basin Project

To Developer:

[insert address]

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

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

[Signatures on following page]

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

By: _____
John Rahaim
Director of Planning

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

Approved:

By: _____
Naomi Kelly, City Administrator

By: _____
Mohammed Nuru, Director of Public Works

DEVELOPER:

_____ LLC, a Delaware
limited liability company

By: _____
Name: _____
Its: _____

CONSENT TO DEVELOPMENT AGREEMENT

San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco (“**SFMTA**”) has reviewed the Development Agreement to which this Consent to Development Agreement (this “**SFMTA Consent**”) is attached. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the Infrastructure Plan, the Transportation Plan, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, consented to the following:

1. The Development Agreement as it relates to matters under SFMTA jurisdiction, including the Transportation Plan, the Infrastructure Plan (including, without limitation, the Infrastructure Design Exceptions Memo) and the transportation-related Mitigation Measures; and
2. Subject to Developer satisfying SFMTA’s requirements and the transportation-related Mitigation Measures for design, construction, testing, performance, training, documentation, warranties and guarantees, that are consistent with the applicable City regulations and applicable State and federal law and the plans and specifications approved by the SFMTA under the terms of the Development Agreement, SFMTA’s accepting the SFMTA Infrastructure described in the Infrastructure Plan, including but not limited to the Infrastructure Design Exceptions Memo, and the Transportation Plan that will be under SFMTA jurisdiction.
3. SFMTA has reviewed and approved the proposed street vacation actions as shown on Exhibit T. As a result, SFMTA waives any requirement that the proposed street vacations obtain review and recommendation by the City’s interdepartmental Transportation Advisory Staff Committee (TASC).
4. Delegating to the SFMTA Executive Director any Later Approvals of the SFPUC under the Development Agreement, subject to applicable law including the City’s Charter.
5. The SFMTA Board of Directors also directs the SFMTA Executive Director to administer and direct the allocation and use of Transportation Fees in an amount no less than the Total Fee Amount as provided in Exhibit S. [*in what way are we directing use of transportation fees?*]

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

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

By: _____
Ed Reiskin, Executive Director

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

By: _____
Deputy City Attorney

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Public Utilities Commission

The Public Utilities Commission of the City and County of San Francisco (the “SFPUC”) has reviewed the Development Agreement to which this Consent to Development Agreement (this “SFPUC Consent”) is attached. Except as otherwise defined in this SFPUC Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFPUC Consent, the undersigned confirms that the SFPUC, after considering the Development Agreement, the Infrastructure Plan, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, and utility-related Mitigation Measures at a duly noticed public hearing, consented to:

1. The Development Agreement as it relates to matters under SFPUC jurisdiction, including, but not limited to, the Stormwater Management Improvements, Infrastructure Plan (including, without limitation, the Infrastructure Design Exceptions Memo) and the SFPUC-related Mitigation Measures.
2. Subject to Developer satisfying the SFPUC’s requirements for construction, operation, and maintenance that are consistent with the Development Agreement, applicable State and federal law, and the plans and specifications approved by the SFPUC under the terms of the Development Agreement (including, without limitation, the Infrastructure Design Exceptions Memo), and meeting the SFPUC-related Mitigation Measures, the SFPUC’s accepting and then, subject to appropriation, operating and maintaining SFPUC-related infrastructure.
3. Delegating to the SFPUC General Manager any Later Approvals of the SFPUC under the Development Agreement, including approvals of Development Phase Applications, subject to applicable law including the City’s Charter.
4. SFPUC has reviewed and approved the proposed street vacation actions as shown on Exhibit T. As a result, SFPUC waives any requirement that the proposed street vacations obtain review and recommendation by the City’s interdepartmental Transportation Advisory Staff Committee (TASC).

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

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, acting by and through the SAN
FRANCISCO PUBLIC UTILITY COMMISSION

By: _____
Harlan Kelly, General Manager

CONSENT TO DEVELOPMENT AGREEMENT
Port Commission

The Port Commission of the City and County of San Francisco (the “**Port Commission**”) has reviewed the Development Agreement to which this Consent to Development Agreement (this “**Port Consent**”) is attached. Except as otherwise defined in this Port Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this Port Consent, the undersigned confirms that the Port, after considering at a duly noticed public hearing the Development Agreement and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, consented to:

1. The Development Agreement, Public Trust Exchange Agreement and the Open Space Covenant, each as they relate to matters under Port jurisdiction, including, any Infrastructure, Stormwater Management Improvements, and other Public Improvements planned for land under Port jurisdiction.
2. Developer’s Completion of the Parks and Open Spaces as set forth in the Development Agreement.
3. Delegating to the Port Executive Director any Later Approvals of the Port under the Development Agreement, including execution and performance of the Public Trust Exchange Agreement and the Open Space Covenant, subject to applicable law including the City’s Charter.
4. The Port Commission has reviewed and approved the proposed street vacation actions as shown on Exhibit T. As a result, the Port Commission waives any requirement that the proposed street vacations obtain review and recommendation by the City’s interdepartmental Transportation Advisory Staff Committee (TASC).

By authorizing this Port Consent, the Port Commission does not intend to in any way limit the exclusive authority of the Port Commission under Applicable Law.

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, acting by and through the SAN
FRANCISCO PORT COMMISSION

By: _____
Elaine Forbes, Executive Director

CONSENT TO DEVELOPMENT AGREEMENT
RPD Commission

The Recreation and Park Commission of the City and County of San Francisco (the “**RPD Commission**”) has reviewed the Development Agreement to which this Consent to Development Agreement (this “**RPD Consent**”) is attached. Except as otherwise defined in this RPD Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this RPD Consent, the undersigned confirms that the RPD Commission, after considering at a duly noticed public hearing the Development Agreement, including the draft Public Trust Exchange Agreement, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, at a duly noticed public hearing, consented to:

1. The Development Agreement, Public Trust Exchange Agreement and the Open Space Covenant, each as they relate to matters under RPD jurisdiction, including, any Infrastructure, Stormwater Management Improvements, and other Public Improvements planned for land that will be operated and maintained by RPD.
2. Developer’s Completion of the Parks and Open Spaces as set forth in the Development Agreement.
3. Delegating to the RPD General Manager any Later Approvals of RPD under the Development Agreement, together with execution and performance authority required for the Public Trust Exchange Agreement and the Open Space Covenant, subject to applicable law including the City’s Charter.
4. The RPD Commission has reviewed and approved the proposed street vacation actions as shown on Exhibit T. As a result, the RPD Commission waives any requirement that the proposed street vacations obtain review and recommendation by the City’s interdepartmental Transportation Advisory Staff Committee (TASC).

By authorizing this RPD Consent, the RPD Commission does not intend to in any way limit the exclusive authority of the ReckPark Commission under Applicable Law.

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

By: _____
Phil Ginsburg, General Manager

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Fire Department

The Fire Chief and the Fire Marshall of the City and County of San Francisco have reviewed the Development Agreement to which this Consent (this “**SFFD Consent**”) is attached. Except as otherwise defined in this SFFD Consent, initially capitalized terms have the meanings given in the Development Agreement. By executing this SFFD Consent, the undersigned confirm that, after review of the Infrastructure Plan and the Design Guidelines, together with the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, they have consented to:

1. The Development Agreement as it relates to matters under SFFD jurisdiction; and
2. Subject to Developer satisfying the SFFD’s requirements for construction consistent with the Development Agreement and applicable State and federal law, the City’s acceptance of Infrastructure Completed by Developer.
3. The SFFD has reviewed and approved the proposed street vacation actions as shown on Exhibit T. As a result, SFFD waives any requirement that the proposed street vacations obtain review and recommendation by the City’s interdepartmental Transportation Advisory Staff Committee (TASC).

By authorizing this SFFD Consent, the SFFD Fire Chief and Fire Marshall not intend to in any way limit the authority of the SFFD as set forth in Section 4.108 and 4.128 of the City’s Charter.

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, acting by and through the SAN
FRANCISCO FIRE CHIEF AND FIRE MARSHALL

By: _____
Fire Chief

By: _____
Fire Marshall

EXHIBIT A

Developer Property Legal Description

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:

EXHIBIT B-1

India Basin Open Space Legal Description

EXHIBIT B-2

The Big Green Legal Description

EXHIBIT C

Public ROWs Legal Description

EXHIBIT D

List of Approvals

Final approval actions by the City and County of San Francisco Board of Supervisors for the India Basin Mixed-Use District Project

1. **Ordinance [_____]** (**File No. [_____]**): (1) Approving a Development Agreement between the City and County of San Francisco and BUILD Inc.; (2) waiving or modifying certain provisions of the Administrative Code, Planning Code, Subdivision Code, and Zoning Map; and (3) adopting findings under the California Environmental Quality Act, public trust findings, and findings of consistency with the General Plan and Planning Code priority policies.
2. **Ordinance [_____]** (**File No. [_____]**): Amending the Planning Code and the Zoning Map to add the India Basin Mixed Use Project Special Use District.
3. **Ordinance [_____]** (**File No. [_____]**): Amending the General Plan to refer to the India Basin Mixed Use Project Special Use District.

Final and Related Approval Actions of City and County of San Francisco Port Commission (referenced by Resolution number “R No.”)

1. **R No. [_____]**: [_____]: Consenting to a Development Agreement between the City and BUILD, Inc., including a draft Compromise Title Settlement and Land Exchange Agreement for India Basin with the State Lands Commission.
2. **R No. [_____]**: Approving an Open Space Covenant regarding those portions of the India Basin Open Space and Big Green to be exchanged into the Public Trust and placed under SF Port jurisdiction but managed and operated by RPD.

Final and Related Approval Actions of City and County of San Francisco Planning Commission (referenced by Motion Number “M No.” or Resolution Number “R No.”)

1. **M No. [_____]**: Certifying the Final Environmental Impact Report for the India Basin Mixed-Use District Project.
2. **M No. [_____]**: Adopting Findings and Statement of Overriding Considerations under the California Environmental Quality Act.
3. **R No. [_____]**: Recommending to the Board of Supervisors approval of the General Plan Amendments.
4. **R No. [_____]**: Recommending to the Board of Supervisors approval of amendments to the Planning Code and a Zoning Map amendment to establish the India Basin Special Use District.

5. **M No.** [____]: Approving the India Basin Design Standards and Guidelines.
6. **R No.** [____]: Recommending to the Board of Supervisors approval of a Development Agreement between the City and BUILD Inc.
7. **[R] No.** [____]: Approving determination that shadows from buildings exceeding 40 feet in height will have no adverse effect on parks subject to Section 295 of the Planning Code.

Final and Related Approval Actions of City and County of San Francisco Recreation and Park Commission (referenced by Motion Number “M No.” or Resolution Number “R No.”)

1. **[R] No.** [____]: Approving the Design Standards and Guidelines.
2. **[M] No.** [____]: Consenting to consultation with RPD’s general manager on the effect of the proposed project or variant on shadow on parks subject to Section 295 of the Planning Code.
3. **[R] No.** Consenting to a Development Agreement between the City and BUILD, Inc., including a draft Compromise Title Settlement and Land Exchange Agreement for India Basin with the State Lands Commission.
4. **R No.** [____]: Approving an Open Space Covenant regarding those portions of the India Basin Open Space and Big Green to be exchanged into the Public Trust and placed under SF Port jurisdiction but managed and operated by RPD.

Final and Related Approval Actions of Other City and County of San Francisco Boards, Commissions, and Departments:

1. San Francisco Municipal Transportation Agency (SFMTA) **Resolution Number** [_____] consenting to a Development Agreement between the City and BUILD Inc., including Transportation Plan and Infrastructure Plan.; and approving the Interagency Cooperation Agreement.
2. San Francisco Public Utilities Commission (SFPUC) **Resolution Number** [_____] consenting to a Development Agreement between the City and BUILD Inc., including Infrastructure Plan; and approving the Interagency Cooperation Agreement.

EXHIBIT E

Design Standards and Guidelines

Exhibit F
Housing Plan

EXHIBIT G
Infrastructure Plan

EXHIBIT H
Land Use Plan

EXHIBIT I

MMRP

EXHIBIT J

Parks and Open Space Plan

EXHIBIT K

Phasing Plan

EXHIBIT L

Privately-Owned Community Improvements

EXHIBIT M

WHEN RECORDED MAIL TO:

City and County of San Francisco
Department of Real Estate
25 Van Ness Avenue, Suite 400
San Francisco, California 94112

Free recording requested pursuant to
Government Code Section 27383 by the
City and County of San Francisco

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

DECLARATION OF OPEN SPACE COVENANT

This Declaration of Open Space Covenant (this “Declaration”) is made as of [date], 2018, by the City and County of San Francisco, a municipal corporation (the “City”), acting by and through the Department of Real Estate, the Recreation and Park Commission (“RPD”) and the Port Commission (“the Port”).

The City owns various open space parcels commonly known as 900 Innes Avenue, India Basin Shoreline Park and the India Basin Open Space. In connection with a mixed use development project including approximately XXX residences (the “Project”), Build Inc., a _____ (“Master Developer”), has conveyed or will convey approximately __ acres of land to the City to facilitate the improvement and expansion of these open space parcels. The City intends to create an integrated waterfront park, including both land previously owned by the City as well as land dedicated to the City by Master Developer, as generally shown in Exhibit A (the “India Basin Park”).

In connection with the Project, the City entered into a Public Trust Exchange and Title Settlement Agreement [dated XXXX] with the State of California and recorded as Document No. ____ on _____ (the “Exchange Agreement”) to place the public trust for purposes of commerce, navigation and fisheries (the “Public Trust”) on certain public property and to remove the Public Trust and any Public Trust claims from certain development parcels retained by Developer. Under the Exchange Agreement, the City is placing the Public Trust on that portion of the India Basin Park property described in Exhibit B (the “Land”).

The City makes this Declaration to ensure that the Land continues as park and open space subject to the Public Trust in perpetuity, and to confirm the role of RPD and the Port in the use, operation and maintenance of the Land.

The City declares that the Land will be subject to the following restrictions:

1. As part of the Project, the Land shall be improved and become a part of the India Basin Park. The City agrees to maintain the Land as park and open space, subject to the Public Trust. Port shall be trustee of the Public Trust, with the right to ensure that all uses and

operations are consistent with the Public Trust. Non-recreational uses of the Land shall not be allowed except to the extent consistent with the City's Charter and the Public Trust.

2. RPD shall operate and maintain the India Basin Park, including the Land. RPD shall have the right to enter into management, landscaping, programming and other contracts relating to the Land or to perform such work directly by RPD staff. All funding for India Basin Park maintenance and operations shall be managed by and through RPD.
3. If RPD proposes material alterations to the Land or to uses of the Land, RPD shall notify the Port of the proposed alterations or uses so as to give the Port an opportunity to ensure that the alterations or uses, as applicable, are consistent with the Public Trust. The Port may not object to any alteration or use except to the extent it is inconsistent with the Public Trust.
4. Upon the Port's request, RPD staff will provide such information as may be requested by the Port to verify that the uses and operations of the Land are not inconsistent with the Public Trust. RPD staff and Port staff shall meet and confer as needed to ensure the requirements of this Declaration are being satisfied at all times.
5. This Declaration shall remain in effect unless terminated by the City. This Declaration cannot be amended or terminated without the prior consent of the RPD Commission, the Port Commission, and the City's Board of Supervisors, each in their sole discretion following a duly noticed public hearing.
6. This Declaration constitutes a covenant that runs with the Land, binding all future owners and users of the Land, unless expressly terminated as set forth above.
7. Nothing in this Declaration shall be deemed to be a gift to the general public or to give any person or entity, other than the City, the right to enforce this Declaration. There are no third party beneficiaries to this Declaration. Any enforcement shall be by specific performance, without the right to monetary damages or compensation.
8. This Declaration shall be governed by, and construed in accordance with, the laws of the State of California and the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, operating by and through the
Department of Real Estate Real Estate

By: _____
Andrico Penick, Director of Property

Authorized by Board of Supervisors Resolution No. __
Adopted _____, 2018

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, operating by and through the San
Francisco Port Commission

By: _____
Elaine Forbes, Executive Director

Authorized by Port Resolution No. _____
Adopted _____, 2018

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through the
San Francisco Recreation and Park Commission

By: _____
Phil Ginsburg, Executive Director

Authorized by RPD Resolution No. _____
Adopted _____, 2018

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Deputy City Attorney

EXHIBIT N

Design Review of RPD Park Parcels

Applications. Developer will submit to RPD an application for the schematic design of each Park Parcel (each, a “**Schematic Design Application**”) at such time as Developer reasonably determines necessary to meet the requirements for Completion under the Development Agreement. Each Schematic Design Application will include the following information:

- (a) A written narrative describing the overall conceptual design, including the park program, design elements, and facilities provided for the Parks and Open Space;
- (b) An illustrative site plan to scale showing:
 - (i) Conceptual circulation systems (vehicular, bicycle and pedestrian) including parking;
 - (ii) Conceptual grading and drainage;
 - (iii) Generalized locations of active and passive recreational areas; park elements and facilities;
 - (iv) Generalized locations and conceptual layout for landscaping and hardscape areas, including tree planting and any stormwater treatment areas; and
 - (v) Generalized locations for furnishings, lighting, public art, signage, comfort facilities, stairs, ramps, and railing;
- (c) Illustrative sections and perspectives representative of the overall conceptual design, including key relationships between programmatic areas, design elements, and defining park features and facilities; and
- (d) Image “boards” showing proposed concepts, detailed studies and/or precedents for site furnishings, paving materials, site architectural elements, lighting, public art, signage, comfort facilities, stairs, ramps and railings, tree species (and alternate species), and species palette concepts for major landscaping areas.

RPD Review. RPD staff will review each Schematic Design Application for completeness, which means the Schematic Design Application includes all documents and materials in such detail as is required hereunder. RPD will make its determination of completeness within thirty (30) days after submittal and will advise Developer in writing of any deficiencies. The RPD Director will promptly review and either approve or disapprove, or conditionally approve, the Schematic Design Application. Each Schematic Design Application will be approved if, in the reasonable judgment of the RPD Director, the Schematic Design Application meets all of the requirements of, and is consistent with, the applicable Plan Documents and Approvals, including this Agreement and the Design Guidelines. The RPD Director will not (i) disapprove any Schematic Design Application on the basis of any element that conforms to and is consistent with the Plan Documents and

Approvals; or (ii) impose conditions that conflict with the Plan Documents and Approvals. In the event of a disapproval, the RPD Director will notify Developer of the reasons for the disapproval and the items that must be changed or augmented in order to obtain approval. Thereafter, Developer may re-submit a revised Schematic Design Applications to the RPD Director that will address the RPD Director's reasons for disapproval.

EXHIBIT O

Transportation Plan/TDM

EXHIBIT P

Workforce Agreement

EXHIBIT Q

Map of Public Improvements

EXHIBIT R
Financing Plan

EXHIBIT S

List of Applicable Impact Fees and Extractions

EXHIBIT T

Map Showing Streets to be Vacated and Transferred to Developer

EXHIBIT U

Map Showing Land Transfers

EXHIBIT V

Form of Quitclaim Deed

EXHIBIT W

Form of Grant Deed

EXHIBIT X

Public Trust Exchange Agreement

EXHIBIT Y

Form of Notice of Completion and Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

[_____] _____
[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 municipal corporation (the "City"), acting by and through its Planning Department, and [_____, 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 a Development Phase has been completed, including all of the Associated Community Benefits within that Development Phase, the City agreed to execute and record a notice of completion as it relates to the applicable Development Phase.

3. The City confirms that the Development Phase located on the property described in the attached Exhibit A (the "Affected Property") has 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:

Approved as to form:

CITY AND COUNTY OF SAN FRANCISCO,
municipal corporation

[DENNIS J. HERRERA], City Attorney

By: _____
Director of Planning

By: _____
Deputy City Attorney

EXHIBIT Z

Form of Permits to Enter City Property

EXHIBIT AA

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

[Note: Need to add language for City's Section 9.4.2

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. [_____], 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. _____.

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 F as they relate to the Transferred Property. Without limiting the foregoing, Assignee agrees (1) to the terms and provisions of Exhibit F, 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 F.

6. Multiple Developers. Assignee understands that certain obligations under the Developer Agreement are measured on a Project-wide basis, including the Completion of affordable housing under the Affordable Housing Plan and of the Big Green and the India Basin Open Space under the Phasing Plan. If these elements of the Project are not Completed when required, City has the right to withhold certificates of occupancy and Later Approvals throughout the Project as set forth in Development Agreement Section 9.4.2. Assignee understands these provisions, and agrees that it shall have no rights against City for good faith reliance on these remedies. Assignee indemnifies and agrees to defend the City against any claim by another Developer under the Development Agreement that is based on City's exercise of its Section 9.4.2 remedy resulting from a Default by Assignee.

7. 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.

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

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

Attn: _____

With copy to:

Attn: _____

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

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

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

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]