Draft
03.06.19

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

FOCUSED DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND SYTS INVESTMENTS, LLC

Block 6954, Lots 039 and 011C

TABLE OF CONTENTS

Page

1. **DEFINITIONS** 2
2. **EFFECTIVE DATE; TERM** 7
   - 2.1. Effective Date 7
   - 2.2. Term 7
3. **GENERAL RIGHTS AND OBLIGATIONS** 7
   - 3.1. Development of the Project 7
   - 3.2. Workforce 7
4. **PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE** 7
   - 4.1. Community Benefits Exceed Those Required by Existing Ordinances and Regulations 7
   - 4.2. Community Benefits 8
   - 4.3. Obligation to Provide Community Benefits 8
   - 4.4. No Additional CEQA Review Required; Reliance on MND for Future Discretionary Approvals 8
   - 4.5. Nondiscrimination 8
   - 4.6. Prevailing Wages 9
   - 4.7. Impact Fees, Exactions, and Processing Fees 9
   - 4.8. Indemnification of City 9
5. **VESTING AND CITY OBLIGATIONS** 9
   - 5.1. Vested Rights 9
   - 5.2. Existing Standards 10
   - 5.3. Criteria for Later Approvals 10
   - 5.4. Strict Building Code Compliance 10
   - 5.5. Denial of a Later Approval 10
   - 5.6. New City Laws 10
   - 5.7. Fees and Exactions 12
   - 5.8. Changes in Federal or State Laws 12
   - 5.9. No Action to Impede Approvals 13
   - 5.10. Estoppel Certificates 14
   - 5.11. Existing, Continuing Uses and Interim Uses 14

5.12. Costa-Hawkins Rental Housing Act ... 14
5.13. Taxes ... 15
6. **NO DEVELOPMENT OBLIGATION** ... 15
7. **MUTUAL OBLIGATIONS** ... 15
7.1. Notice of Revocation or Termination ... 15
7.2. General Cooperation; Agreement to Cooperate ... 15
7.3. Sidewalks, Streets and Infrastructure ... 16
7.4. Third-Party Challenge ... 16
7.5. Good Faith and Fair Dealing ... 16
7.6. Other Necessary Acts ... 16
8. **PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE** ... 17
8.1. Annual Review ... 17
8.2. Effect on Transferees ... 17
8.3. Default ... 17
9. **ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES** ... 17
9.1. Enforcement ... 17
9.2. Meet and Confer Process ... 17
9.3. Default ... 17
9.4. Remedies ... 18
9.5. Time Limits; Waiver; Remedies Cumulative ... 19
9.6. Attorneys' Fees ... 19
10. **FINANCING; RIGHTS OF MORTGAGEES** ... 19
10.1. Developer's Right to Mortgage. ... 19
10.2. Mortgagee Not Obligated to Construct ... 19
10.3. Copy of Notice of Default and Notice of Failure to Cure to Mortgagee ... 20
10.4. Mortgagee's Option to Cure Defaults ... 20
10.5. Mortgagee's Obligations with Respect to the Property ... 20
10.6. No Impairment of Mortgage ... 20
10.7. Cured Defaults ... 20
11. **AMENDMENT; TERMINATION; EXTENSION OF TERM** ... 21
11.1. Amendment or Termination ... 21
11.2. Early Termination Rights ... 21
11.3. Termination and Vesting ... 21

11.4. Amendment Exemptions 21
11.5. Extension Due to Legal Action or Referendum; Excusable Delay 22
12. **TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE** 22
12.1. Permitted Transfer of this Agreement 22
12.2. Notice of Transfer 23
12.3. Release of Liability 23
12.4. Responsibility for Performance 23
12.5. Constructive Notice 23
12.6. Rights of Developer 23
13. **DEVELOPER REPRESENTATIONS AND WARRANTIES** 24
13.1. Interest of Developer; Due Organization and Standing 24
13.2. No Inability to Perform; Valid Execution 24
13.3. Conflict of Interest 24
13.4. Notification of Limitations on Contributions 24
13.5. Other Documents 24
13.6. No Bankruptcy 24
14. **MISCELLANEOUS PROVISIONS** 25
14.1. Entire Agreement 25
14.2. Incorporation of Exhibits 25
14.3. Binding Covenants; Run With the Land 25
14.4. Applicable Law and Venue 25
14.5. Construction of Agreement 25
14.6. Project Is a Private Undertaking; No Joint Venture or Partnership 25
14.7. Recordation 26
14.8. Obligations Not Dischargeable in Bankruptcy 26
14.9. Survival 26
14.10. Signature in Counterparts 26
14.11. Notices 26

EXHIBITS:

A-1 Project Site Plan

A-2 Legal Description

B Project Description

C Affordable Housing Program

D Affordable Housing Performance Schedule

E List of Approvals

F Form of Assignment and Assumption Agreement

FOCUSED DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND SYTS INVESTMENTS, LLC.

This Focused Development Agreement, dated for reference purposes only as of ______________, 2019, is between the City and County of San Francisco, a municipal corporation (the "**City**"), acting by and through its Planning Department, and SYTS INVESTMENTS, LLC, a California limited liability company ("**Developer**"). 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.

R E C I T A L S

This Agreement is made with reference to the following facts:

A. Developer owns an approximately 32,182 square foot site located on the east side of Cayuga Avenue on the block bounded by Cayuga Avenue, Ocean Avenue, Alemany Boulevard, and Onandaga Avenue in the Outer Mission neighborhood of San Francisco, on the real property more particularly described on Exhibit A (the "**Project Site**"). The Project Site is currently improved with a two-story building with approximately 12,555 square feet of commercial space and approximately 12 surface parking spaces accessed via a driveway on Cayuga Avenue. The Project Site is located in the Excelsior Outer Mission Street Zoning Use District and in the 40-X Height and Bulk District.

B. Developer proposes to demolish the existing building and construct a 5-story residential building that will provide 116 dwelling units, 69 car parking spaces, 116 class 1 bicycle parking spaces and 18 class 2 bicycle spaces, all as more particularly described on Exhibit B (the "**Project**"). Fifty eight (58) of the residential units within the Project will be below market residential units that are permanently affordable to households earning between 55% and 100% of area median income in accordance with Planning Code Section 415 *et seq.* (collectively, the "**BMR Units**").

C. 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.

D. In addition to the overall public benefits to the City from Developer generally, and the Project in particular, the City has determined that as a result of the development of the Project in accordance with this Agreement, additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include providing significantly more BMR Units than would otherwise be required by Section 415 *et seq.* of the Planning Code. In particular, one half of the Project's units will be BMR units, including eleven (11) BMR units at

55% of area median income, twelve (12) BMR Units at 80% of area median income, and thirty-five (35) BMR Units at 100% of area median income.

E. 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.

F. The Preliminary Mitigated Negative Declaration was prepared for the Project and published on January 23, 2019 and became final without appeal on [____________] (**"MND"**). On [___________], the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission by Resolution No. [__________] determined among other things that the MND thoroughly analyzes the Project and adopted a Mitigation Monitoring Reporting Program (**the "CEQA Findings")** and further determined by Resolution No. [_________] that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as proposed to be amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**").

G. On [_____________], the Land Use and Transportation Committee of 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 Land Use and Transportation Committee of the Board incorporated by reference the CEQA Findings and the General Plan Consistency Findings and recommended the approval of this Agreement.

H. On [_____________], the Board adopted Ordinance Nos. [______] and [__________], amending the Planning Code, the Zoning Map, 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 [______________].

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

AGREEMENT

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

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

1.2."**Agreement**" means this Focused Development Agreement, the Exhibits which are expressly incorporated herein, and any amendments thereto.

1.3."**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 for high housing cost area.

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

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

1.6."**Approvals**" means the City approvals, entitlements, and permits listed on Exhibit_E.

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

1.8."**BMR Units**" has the meaning set forth in Recital B.

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

1.10. "**Building**" or "**Buildings**" means each of the existing, modified and new buildings on and to be constructed on the Project Site, as generally provided in the Project Description attached as Exhibit B.

1.11. "**CEQA**" has the meaning set forth in Recital E.

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

1.13. "**CEQA Guidelines**" has the meaning set forth in Recital E.

1.14. "**Chapter 56**" has the meaning set forth in Recital C.

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

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

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

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

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

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

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

1.22. "**Community Benefits Program**" has the meaning set forth in Section 4.2.

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

1.24. "**DBI**" means the Department of Building Inspection of the City and County of San Francisco.

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

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

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

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

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

1.30. "**Enacting Ordinance**" has the meaning set forth in Recital H.

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

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

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

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

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

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

1.37. "**General Plan Consistency Findings**" has the meaning set forth in Recital F.

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

1.39. "**Housing Program**" means the Affordable Housing Program attached hereto as Exhibit C.

1.40. "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of Projects, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special

assessments or school district fees, and SFPUC Capacity Charges, and any fees, taxes, assessments, or impositions imposed by any Non-City Agency, all of which shall be due and payable by Developer as and when due in accordance with Applicable Laws.

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

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

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

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

1.45. "**Life of the Project**" means the period of time that the Project or any modification of the Project remains in existence.

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

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

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

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

1.50. "**MMRP**" means that certain mitigation monitoring and reporting program for the Project Site, adopted by the Planning Commission and the Board..

1.51. "**MND**" has the meaning set forth in Recital F.

1.52. "**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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.69. "**Recorded Restrictions**" means the restrictions running with the land, binding upon Developer and successor owners of all or part of the Project, as more particularly described in Section 5.6.3.

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

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

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

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

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

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

1.76. "**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 MND or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or

Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

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

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

2. EFFECTIVE DATE; TERM

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

2.2. Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect until the earlier to occur of the following: (a) a final certificate of occupancy for all of the Project is issued, or (b) five (5) years after the Effective Date, as extended for each day of a Litigation Extension and Excusable Delay, unless this Agreement is extended or earlier terminated as provided herein ("**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 (a) the Term, or (b) the term otherwise allowed under the Subdivision Map Act or conditional use approval, as applicable.

3. GENERAL RIGHTS AND OBLIGATIONS

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

3.2. Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with Administrative Code Section 83.11 and Applicable Laws.

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

4.1. Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including 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 the City would not be willing to enter into this Agreement without the Community Benefits. Time is of the essence with respect to the completion of the Community Benefits.

4.2. Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefits Program**"):

(a) alleviating pressure on the City's existing housing stock by adding approximately one hundred sixteen (116) residential units;

(b) providing eleven (11) BMR Units at 55% of AMI;

(c) providing twelve (12) BMR Units at 80% of AMI;

(d) providing thirty-five (35) BMR Units at 100% of AMI;

(e) adhering to the Affordable Housing Performance Schedule as further described in Exhibit D.

4.3. Obligation to Provide Community Benefits. Prior to obtaining a site permit for all or any portion of the Project, Developer will record the Recorded Restrictions against the Project Site. Prior to obtaining any temporary certificate of occupancy or certificate of occupancy for any portion of the Project, Developer will provide the Community Benefits. Developer's obligation to provide the Community Benefits is conditioned upon obtaining a temporary certificate of occupancy or a certificate of occupancy for all or any portion of the Project.

4.4. No Additional CEQA Review Required; Reliance on MND for Future Discretionary Approvals. The Parties acknowledge that the MND prepared for the Project complies with CEQA. The Parties further acknowledge that (a) the MND contains a thorough analysis of the Project, and (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, pursuant to CEQA Guidelines. Accordingly, the City does not intend to conduct any further environmental review or impose any additional mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the MND, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

4.4.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the MND and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

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

Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

4.6. Prevailing Wages. Developer agrees that all persons performing labor in the construction of improvements on property owned by the City shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent with the requirements of Section 6.22(E) of the Administrative Code. Developer shall include this requirement in any construction contract for any such improvements and shall maintain records and require subcontractors to maintain records, as required by Administrative Code Section 6.22(E).

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

4.8 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include , without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

5. VESTING AND CITY OBLIGATIONS

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

5.2. Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) subject to Section 5.4, the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 5.6, (iii) California and federal law, as applicable, and (iv) this Agreement (collectively, "**Applicable Laws**"). Notwithstanding the foregoing, Developer shall implement the BMR program consistent with the City's Procedures Manual as published by the City pursuant to Section 415 of the Planning Code and as consistent with this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.6.2 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications) with respect to some or all of the Project Site as may be necessary or desirable in order to lease, mortgage or sell all or some portion of the Project Site. The specific boundaries of parcels shall be set by Developer and approved by relevant City agencies during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals. Developer shall cause any Mortgagee to provide its authorized signature on any final subdivision map with respect to the Project, which shall include consent and acknowledgement of the BMR Units and the Recorded Restrictions, with specified AMI levels, for the life of the Project, in accordance with this Agreement.

5.6.3 Developer shall record restrictions running with the land, in form and substance satisfactory to the Planning Director and the City Attorney (the "**Recorded Restrictions**"), binding upon Developer and successor owners of all or part of the BMR Units, that shall, without limitation: (i) maintain the BMR Units for the exclusive tenancy, use and occupancy by qualified tenants in accordance with the Housing Program attached as Exhibit C, for the Life of the Project; (ii) require that the BMR Units remain affordable for the Life of the Project; (iii) implement the terms of the Housing Program; and (iv) waive any other laws or regulations that would limit the ability of the City or any tenant to enforce the benefits and amenities relative to the BMR Units under this Agreement. Developer shall ensure 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 the Recorded Restrictions. Developer, on behalf of itself and successor owners, agrees that it shall not seek to challenge the applicability or enforceability of the Recorded Restrictions. Without limiting the City's rights and remedies as set forth in this Agreement, the Parties acknowledge and agree that the City shall have the right of specific performance to enforce the Recorded Restrictions against Developer and all successor owners. The City would not be willing to enter into this Agreement without the agreement and understanding as set forth above.

5.7. Fees and Exactions.

5.7.1 Generally. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 5.7, and the City shall not impose any new Processing Fees or new or modified Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 5.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

5.7.2 Impact Fees and Exactions. During the Term, as extended by any Litigation Extensions, no Impact Fees and Exactions shall apply to the Project or components thereof except for (i) the SFPUC Capacity Charges, (ii) those Impact Fees and Exactions in effect as of the Effective Date, (iii) New City Laws that do not conflict with this Agreement as set forth in Section 5.6, and (iv) as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined. Accordingly, Developer shall be subject to any increase or decrease in the fee amount payable, but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions (*e.g.,* any increase in the required number or percentage of affordable housing units, any change in the minimum or maximum area median income (AMI) percentage levels for the affordable housing pricing or income eligibility, changes to unit type requirements, or any reduction in the threshold of applicability for imposition of a fee, such as square footage), or any increase in any fee in excess of the annual or other regularly scheduled increase in such fee (e.g., annual increases based on the Annual Infrastructure Construction Cost Inflation Estimate, Consumer Price Index, Cost of Living Adjustment, or other index) after the Effective Date.

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

5.8. Changes in Federal or State Laws.

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

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

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

5.8.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute that would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

5.8.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 5.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 5.8 or any changes in Federal or State Laws described thereunder 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 then in the case of a Law Adverse to Developer, Developer may unilaterally terminate this Agreement, and in the case of a Law Adverse to the City, the City may unilaterally terminate this Agreement. If, despite a termination of this Agreement due to a Law Adverse to Developer or a Law Adverse to the City, Developer constructs the Building pursuant to the Approvals, Developer's obligation to provide the Community Benefits will not terminate.

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

5.10. Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Default; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 8. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request.

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

5.12. Costa-Hawkins Rental Housing Act.

5.12.1 Non-Applicability. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act, California Civil Code section 1954.50 et seq. (the "**Costa-Hawkins Act**") provides for no limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public agency in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code or Civil Code section 1954.52(b). The Parties agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the BMR Units, consistent with the Housing Program and Recorded Restrictions. This Agreement falls within the express exception to the Costa-Hawkins Act, Section 1954.52(b) because this Agreement is a contract with a public entity in consideration for contributions and other forms of assistance specified in Chapter 4.3 (commencing with Section 65915 of Division 1 of Title 7 of the California Government Code). The City and 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 this 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 Recorded Restrictions or the requirements of this Agreement related to the applicability of the Housing Program to the BMR Units as set forth in the Housing Plan under the Costa-Hawkins Act (as the Costa-Hawkins Act may be amended or supplanted from time to time). If and to the extent such general covenants and waivers are not enforceable under Law, the Parties acknowledge and that they are important elements of the consideration for this Agreement and the Parties should not have the benefits of this Agreement without the burdens of this Agreement. Accordingly, if 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.

5.12.3 Inclusion in All Assignment and Assumption Agreements and Recorded Restrictions. Developer shall include the provisions of this Section 5.12 in any and all

assignment and assumption agreements, and any and all recorded restrictions, for any portion of the Project Site that includes or will include BMR Units.

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

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to record the Recorded Restrictions against the Project Site prior to obtaining a site permit and to complete the Community Benefits prior to obtaining any temporary certificate of occupancy or final certificate of occupancy relating to all or any portion of the Project as set forth in Section 4.2. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

7.1. Notice of 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.

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. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for the Project.

7.3. Sidewalks, Streets and Infrastructure. By entering into this Agreement, the City's Board of Supervisors and the City Agencies have reviewed and approved the Public Improvements, including sidewalk, pathway, and street widths and general right of way configurations with respect to location and relationship of major elements, curbs, bicycle facilities, parking, loading areas, and landscaping as set forth in the Project SUD, 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. No City Agency with jurisdiction may object to a Later Approval for any Building or Public Improvements due to the proposed width of a sidewalk, pathway, or street unless such objection is based upon the applicable City Agency's reserved authority to review engineering design or other authority under State law. In the case of such objection, then within five (5) business days of the objection being raised (whether raised formally or informally), representatives from Developer, DPW, 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. 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 the City policy, 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*.

7.4. Third-Party Challenge. Developer shall assist and cooperate with the City at Developer's own expense, except as provided in Section 7.4.1, in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

7.4.1 Developer may elect to terminate this Agreement by notice to City within thirty (30) days of the filing of a Third Party Challenge. Upon any such termination by Developer, the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs. Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of Developer under this Agreement, then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project (and only as to such portion), and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

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

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

7.6. 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.

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

8.1. Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code, except as Section 56.17 is modified by this Agreement, at the beginning of each May following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), Developer shall provide a letter to the Planning Director demonstrating Developer's good faith compliance with this Agreement, and the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. 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. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement, including termination of this Agreement.

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

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

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

9.1. Enforcement. As of the date of this Agreement, the only Parties to this Agreement are the City and Developer. Except as expressly set forth this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

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

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

completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations. Accordingly, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site.

9.4. Remedies.

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

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

9.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 9.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, and (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed 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 Community Benefit as determined by the court. 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 of the Project is current on payments due the City. The City shall have the right to withhold any site permit until the Recorded Restrictions are recorded against the Project Site and also shall have the right to withhold any temporary certificate of occupancy or certificate of occupancy for any part of the Project until all of the Community Benefits are completed. For a Building to be deemed completed, Developer shall have completed all of the streetscape and open space improvements required by the Approvals; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance.

9.5. Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

9.6. Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, each party shall bear its own attorneys' fees and costs.

10. FINANCING; RIGHTS OF MORTGAGEES

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

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 in 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 Community Benefits must be completed as set forth in Section 4. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

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

10.4. Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 10.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary Default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If a Default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the 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 Defaults: (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 City, to a certificate of completion.

10.5. Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Community Benefits under Section 4. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

10.6. No Impairment of Mortgage. No Default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. 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.

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

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

11.1. Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided, however, that following a Transfer, the City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 5.8.4, 9.4.2, and 11.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

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

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

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

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

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

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

11.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

12.1. Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all of the Project Site (a "**Transfer**") in the entire Project Site or in single individual units without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to the Project Site together with any Community Benefits (the "**Transferred Property**"). Notwithstanding anything to the contrary in this Agreement, any ongoing obligations that continue after the certificate of occupancy is issued for the Building (such as open space operation and maintenance) may be transferred to a residential,

commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

12.2. Notice of Transfer. 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**") with a legal description. The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit F (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 the other provisions of this Agreement required to be included therein. Any material changes to the attached form will be subject to the review and approval of the Director of Planning.

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

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

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

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

Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

14. MISCELLANEOUS PROVISIONS

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

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

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

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

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

14.6. Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder.

Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

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

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

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

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

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

To City:

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

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, 915 Cayuga Project

To Developer:
Atlas Property Group, Inc.
Attention: Jennifer Bobbitt
1256 Howard Street
San Francisco, CA 94103

with a copy to:
Tahbazof Law Firm
Attn: Sufi Tahbazof Hariri, Esq.
1256 Howard Street
San Francisco, CA 94103

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

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

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

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

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

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

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

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

14.20. Compliance with Laws. In connection with the Project, Developer shall comply with all applicable Law.

[signatures follow on next page]

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: ________________________________
John Rahaim
Director of Planning

Approved on ___________
Board of Supervisors Ordinance No. ________

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: ________________________________
Elizabeth A. Dietrich
Deputy City Attorney

STYS INVESTMENTS, LLC,
a California limited liability company

By: ________________________________
Name: ________________
Its: ________________

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _________________________________

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature __________________________________

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature __________________________________

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature __________________________________

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

State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature __________________________________

<u>Exhibit A-1</u>

Site Plan

Exhibit A-2

Legal Description

Exhibit B

Project Description

The project site is located on the block bounded by Alemany Boulevard to the east, Ocean Avenue to the north, Cayuga Avenue to the west, and Onondaga Avenue to the south in the Outer Mission neighborhood. The proposed project would demolish the existing two-story mixed-used building and construct a new approximately 115,610-square-foot residential building with 116 dwelling units (including 16 studio, 18 one-bedroom, 70 two-bedroom, and 12 three-bedroom units) and 400 square feet of accessory office use. Approximately 50 percent of the units would be affordable. Due to the existing site slope, the proposed five-story building would be approximately 50-feettall measured from Alemany Boulevard (56 feet including the 6-foot-tall elevator penthouse) and 72 feet tall from Cayuga Avenue (78 feet including the 6-foot-tall elevator penthouse).

Pedestrian entrances would be located off Alemany Boulevard, which includes the main lobby, and a secondary entrance would be located along the internal driveway off Cayuga Avenue. The proposed building would include an underground garage on Basement Level 2 accessed via a curb cut on Cayuga Avenue. The garage would contain 69 vehicular parking spaces (63 parking spaces with eight of those in stackers, three ADA accessible parking spaces, and three car-share parking spaces). Basement level 1 would include 116 class 1 bicycle spaces along with a bicycle repair station. The project proposes approximately 12,410 square feet of open space, including: approximately 8,605 square feet of common open space at the backyard, basement level-1, and the rooftop; approximately 3,495 square feet of private open space at the basement level fronting the Cayuga side of the property; and approximately 310 square feet of private open space at the third floor. The backyard open space would reduce the internal driveway aisle to 20 feet in width. The backyard open space would include bollards and planter boxes.

Exhibit C

Housing Program

This Exhibit C is part of that certain Focused Development Agreement by and between the City and County of San Francisco, a municipal corporation ("City"), and SYTS Investments, LLC, a California limited liability company ("Developer") dated as of ____________, 2019 with regard to certain real property located at Lots 039 and 011C, Block 6954 in San Francisco (the "Agreement"). Capitalized terms not defined in this Exhibit C shall have the meaning given in the Agreement. The Project will provide additional housing benefits than are currently required by law. Overall the Project will achieve 50% affordability. The Project will provide 58 Units of additional housing that are permanently affordable in accordance with Planning Code Section 415 et seq. ("BMR Units"), significantly more than would otherwise be required. The project will be built in one phase. Developer agrees to provide all of the affordable housing as on-site units as described below, and waives any right to construct affordable housing units offsite or to pay any in lieu fee under Planning Code section 415 et seq. Developer and City agree to comply with the BMR Performance Plan set forth in Attachment 1 to this Exhibit.

1. BMR Units.

(a). Number and Affordability of BMR Units. Not less than fifty percent (50%) of the total number of units located in the Project (approximately 58 units) shall consist of BMR Units affordable to households earning up to 100% AMI. Specifically (i) 12 BMR units (10% of total units) shall have an affordable rent set at 55% of AMI or less, and will be rented to households earning up to 65% of AMI; (ii) 12 BMR Units (10% of total units) shall have an affordable rent set at 80% of AMI or less, with households earning from 65% to 90% of AMI eligible to apply; and (iii) 34 BMR Units (30% of total units) shall have an affordable rent set at 100% of AMI or less, with households earning from 90% to 120% of AMI eligible to apply. The BMR Units ensure that the Project's overall affordability exceeds the on-site affordability amounts otherwise required under Planning Code Section 415 et seq. as applied to the Project. The rental and re-rental of the BMR Units shall comply with the lottery preferences and all other provisions utilized by City's Mayor's Office of Housing and Community Development ("MOHCD") under the Inclusionary Affordable Housing Program Monitoring and Procedures Manual and the Housing Preferences and Lottery Procedures Manual (collectively, the "Housing Manuals"), both as published by and as updated from time to time, to the extent permitted by law. Developer shall record the Recorded Restrictions prior to issuance of any site permit for any part of the Project. Developer shall ensure, by means of a subordination agreement or otherwise, that no Mortgage, existing lien or encumbrance recorded against the Project Site, 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.

(b) Compliance with Planning Code Section 415. The Parties shall implement the affordable housing requirements and provide the BMR Units in accordance with the provisions of Planning Code section 415 et seq., and the Housing Manuals, except for (i) the range of income eligible households described in Section 1 above, and (ii) any updates or changes that would be a Material Change under this Agreement. The following changes shall be deemed to be a Material Change under this

Agreement and therefore shall not apply to the Project: (i) any increase in the required number or percentage of affordable housing units; and (ii) any change in the minimum or maximum AMI percentage levels for the affordable housing pricing or income eligibility.

(c) Comparability. The BMR Units shall be intermixed and dispersed throughout the Project in locations approved by the Planning Department, and will be generally indistinguishable in appearance from other units in that building. The BMR Units and other units in the Building with the same household size shall be substantially similar in size, type, amenities and overall quality of construction, as further described in the Manuals. All BMR Units will be wired for telephone, cable, and internet access, together with any new technology installed by the Developer in the other units in the Building. Except as otherwise approved by City's Planning Department, the BMR Units will comply with Zoning Administrator Bulletin No. 10 as updated from time to time unless such compliance proves reasonably unavoidable.

2. Costa-Hawkins Rental Housing Act

(a) Non-Applicability of Costa-Hawkins Act. Pursuant to Section 5.12 of the Agreement, Developer has agreed, among other things, that (i) the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the BMR Units, consistent with the Housing Program and Recorded Restrictions, and (ii) not to challenge and expressly waived any and all rights to challenge the Recorded Restrictions or the requirements of the Agreement related to the applicability of the Housing Program to the BMR Units under the Costa-Hawkins Act.

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

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

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

Exhibit D

Affordable Housing Performance Schedule

Step	Performance Milestone	Executed By	Deadline
PLANNING APPROVALS - DESIGNATION OF AFFORDABLE UNITS			
	Submittal of proposed designation of affordable units to Planning	Developer	TBD
	Review and approval of proposed designation of affordable units	Planning	TBD
EXECUTION OF DEVELOPMENT AGREEMENT			
	Approval of Development Agreement by Board of Supervisors	Team	TBD
	Signing of Development Agreement Ordinance by Mayor	Clerk of BoS	10 days after BOS approval
	Circulation of Development Agreement for signatures	OEWD	5 business days after Mayor's signature
	Recordation of Development Agreement	OEWD	2 business days after final department signature obtained
RECORDING OF ADDITIONAL KEY DOCUMENTS			
	Recordation of Notice of Special Restrictions (Recorded Restrictions)	Developer	2 business days after final department signature obtained and Developer is notified in writing that the Agreement is ready for recording.
COMMENCEMENT OF CONSTRUCTION			
BMR PRICING, MARKETING, AND LOTTERY			
	Transmition of copies of (A) recorded Notice of Special Restrictions to City, (B) final Planning Approval, (C) Affidavit of Compliance; and (D) approved floor plans indicating location of BMR Units to MOHCD	Planning	TBD
	Pre-Pricing Meeting	MOHCD/Developer	7 Months prior to TCO

	Submittal of BMR Rental Pricing Request Form ("PRF") including submittal of Leasing Plan	Developer	TBD - generally submitted 6 months prior to receipt of building's temporary certificate of occupancy.
	Review and approval BMR Rental Pricing Request Form	MOHCD	MOHCD will approve or disapprove (with reasons for any disapproval) within 15 business days after complete submittal of documents A - D and Developer submitting Form. Should the units begin marketing in one calendar year with rental rates that were estabished in the previous year, MOH will revise the PRF within 15 business days.
	Submittal of Marketing Plan for Initial Rental of BMR Units. Marketing Plan shall identify contracted 3rd party Leasing Consultant	Developer	15 business days after approval of BMR Rental Pricing
	Meeting with MOHCD to finalize Marketing Plan	MOHCD/Developer	No later than 21 calendars day after Marketing Plan submittal

	Approval of Marketing Plan	MOHCD	MOHCD will approve or disapprove (with reasons for any disapproval) within 30 calendar days after Developer submits the complete Marketing Plan. MOHCD will not require Developer to make any changes to its lease, tenancy rules, or other related documents unless such changes are required to conform to applicable law, MOHCD policies and standard practices, and the City and County of San Francisco's Inclusionary Affordable Housing Program Monitoring and Procedures Manual in existence at the time of submittal of Marketing Plan. If MOHCD disapproves the Marketing Plan, MOHCD will review and approve Developer's revised plan within 15 calendar days of its resubmittal of the complete revised Marketing Plan that properly addresses MOHCD's comments.
	BMR Unit Marketing Period. Communication to MOHCD when Project is at approximately 90% construction completion	Developer/MOHCD	Commences 45 calendar days from date of submission of approved Marketing Plan and lasts for 21 calendar days. Developer and MOHCD will confer regularly regarding the status of construction and any actual or potential construction delays.

	BMR Advertising in printed media	Developer	During 21 day Marketing Period. (NOTE: this is contingent depending on the media outlets publication schedules)
	BMR Application Deadline	Developer	21st day of Marketing Period
	Posting of Neighborhood Resident Housing Preference (NRHP) results on MOHCD website	MOHCD	7 days prior to Lottery *(Applicant option to appeal NRHP decision close 48 hours prior to Lottery)*
	Communication to MOHCD when project is at approximately 95% construction completion.	Developer	7 days prior to Lottery
	BMR Unit Lottery	MOHCD/Developer	No sooner than 21 days after the BMR Application Deadline.
	Lottery Winners List published	MOHCD	No later than 7 days after the lottery.
	Developer contacts Lottery winners from list published by MOHCD and begins lease-up process consisting of income verification and program qualification process	DEVELOPER/MOHCD	MOHCD will review and complete income verification within 5 business days of receipt of applicant information from Developer. Developer may begin lease-up of the units upon receiving its Temporary Certificate of Occupancy. Lottery winner must have an opportunity to inspect either similar model unit or actual physical unit.
COMPLETION OF CONSTRUCTION			
	Temporary Certificate of Occupancy	Developer	
	Move-in/Lease date	Developer	

Exhibit E

Approvals

1. Mitigated Negative Declaration;

2. Planning Code Amendment to amend the Zoning Map to change the Zoning District of Assessor's Block 6954, Lot 039, from RH-1 and Excelsior Outer Mission Street Neighborhood Commercial District to Excelsior Outer Mission Street Neighborhood Commercial District and to change the Zoning District of Assessor's Block 6954, Lot 011C, from RH-1 to Excelsior Outer Mission Street Neighborhood Commercial District;

3. Planning Code Amendment to a) amend the Zoning Map of Assessor's Block 6954, Lots 039 and 011C from 40-X to 65-X; b) establish the Cayuga/Alemany Special Use District (SUD) for Assessor's Block 6954, Lots 039 and 011C; and c) create the Cayuga/Alemany Special Use District. The Cayuga/Alemany Special Use District requires conditional use authorization for residential uses; eliminates residential density limits within the SUD; establishes the required dwelling unit mix; establishes specific Inclusionary Housing requirements; eliminates the use of Planned Unit Developments pursuant to §304; and eliminates Conditional Use Authorization requirements for demolition of dwelling units pursuant to §317 and development of large lots pursuant to §121.1;

4. Conditional Use Authorization pursuant to §303 with exceptions to requirements for Rear Yard (§134); Usable Open Space (§135); Dwelling Unit Exposure (§140); and Off-Street Freight Loading (§152);

5. Administrative Code Chapter 56 authorizing and conforming ordinance.

Exhibit F

Form of Assignment and Assumption Agreement

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

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

AND WHEN RECORDED MAIL TO:

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

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO FOCUSED DEVELOPMENT AGREEMENT FOR 915 CAYUGA AVENUE

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

RECITALS

A. The SYTS Investments, LLC. a California limited liability company("**Developer**"), 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 ______, 2019, for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on ____________ as Document No. _________.

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

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

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

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

ASSIGNMENT AND ASSUMPTION

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

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

2. Assignment of Development Agreement. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to 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 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 be deemed to be "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. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.

6. Priority of Recorded Restrictions. Assignee agrees that its rights and the rights of any Mortgagee secured by a Mortgage that encumbers all or part of the Transferred Property shall be subordinate to the Recorded Restrictions.

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

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

____
____
____
Attn: _________________

With copy to:

____
____
____
Attn: __________________

9. 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.

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

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

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

Exhibit A to Assignment and Assumption Agreement

Transferred Property

[To be inserted.]

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

STATE OF CALIFORNIA)
)
COUNTY OF ___________________)

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

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

WITNESS my hand and official seal.

____
Name: _________________________________
Notary Public

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

STATE OF CALIFORNIA)
)
COUNTY OF __________________)

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

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

WITNESS my hand and official seal.

____
Name: _________________________________
Notary Public