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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
SSF PUC HOUSING PARTNERS, LLC**

**Former PUC Sites B and C
SOUTH SAN FRANCISCO, CALIFORNIA**

Effective Date: January 10, 2020

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into by and between SSF PUC Housing Partners, LLC, a Delaware limited liability company (“**Developer**”), and the City of South San Francisco, a municipal corporation (“**City**”), pursuant to California Government Code (“**Government Code**”) sections 65864 et seq. Developer and the City are sometimes collectively referred to herein as “**Parties**.¹”

RECITALS

A. 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 enacted California Government Code sections 65864 et seq. (the “**Development Agreements Statute**”), which authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property for the development of such property.

B. Pursuant to Government Code section 65865, City has adopted procedures and requirements for the consideration of development agreements (South San Francisco Municipal Code (“**SSFMC**”) Chapter 19.60). This Agreement has been processed, considered, and executed in accordance with such procedures and requirements.

C. Developer has, or will acquire pursuant to a purchase and sale agreement, a legal and/or equitable interest in certain real property located on the approximately 1.7-acre “**Site B**,” the approximately 3.43-acre “**Site C1**,” (including 2.93 acres of developable property and a 21,821 sf portion of undevelopable Colma Creek), the approximately 1.48-acre “**Site C2**”, and the approximately 0.38-acre “**Oak Avenue Phase 1 Extension Property**,” each as more particularly described and depicted in Exhibit A. Additionally, the City will grant to Developer an easement or other similar legal or equitable right to construct and maintain improvements on the following, each as defined in this Agreement and depicted on Exhibit A:

(a) certain publicly-accessible open space improvements on (1) an approximately 3,286 square foot portion and an approximately 8,550 sf portion of existing City-owned property (“**City Open Space Properties**”), and (2) an approximately 33,981 square feet (“**sf**”) portion of BART-owned property (“**BART Open Space Property**”);

(b) portions of the Oak Avenue Phase 1 Extension (defined below) on (1) an approximately 14,270 sf portion of City-owned property (“**City ROW Property**”), (2) an approximately 7,296 sf portion of BART-owned property (“**BART ROW Property**”), and (3) an approximately 14,350 sf portion of Kaiser-owned property (“**Kaiser ROW Property**”); and

(c) certain access easements necessary to construct and operate the Project as defined in the Project Approvals (defined below).

Collectively, Site B, Site C1, Site C2, the Oak Avenue Phase 1 Extension Property, the City Open Space Properties, the BART Open Space Property, the City ROW Property, the BART ROW Property and the Kaiser ROW Property are the “**Project Site**.²” The Project Site includes properties purchased from the San Francisco Public Utilities Commission by the former

South San Francisco Redevelopment Agency for future redevelopment as mixed-use, transit-oriented development and open space and have been referred to as the “Former PUC” properties or sites. Site B is located just north of the proposed Oak Avenue extension, bounded by the BART easement and the Colma Creek channel to the north. Sites C1 and C2 are located just north of Site B across the Colma Creek channel, bounded by the BART easement and Centennial Trail and by Mission Road. The Parties acknowledge that the Project Site is strategically located, but affected by irregular configuration, existing BART easements and tunnel proximity, Colma Creek and a high ground water table, the future Oak Avenue extension, and development of the City’s Civic Campus Site on Former PUC Site A.

D. The proposed project consists of approximately 800 residential units, (approximately 13 market rate flex live-work units (“**Flex Units**”), approximately 158 below market rate units affordable to 30-80% AMI households (20% of the residential units excluding the Flex Units) (**Affordable Units**”)) and approximately 629 market rate apartment units (“**Market Rate Units**”), improved parks and landscaping, and active ground floor uses throughout the two sites, including retail and commercial spaces (collectively, the “**Project**”). The Flex Units are designated to have flexibility between residential or commercial uses in order to support a more active commercial and small business enterprise opportunity in the Project. The Project is anticipated to be approximately 1.1 million sf. Subject to final design, the Project anticipates a single building on Site B (“**Building B**”), a building on Site C1 (“**Building C1**”) and a building on Site C2 (“**Building C2**”), as follows:

- Building B: Market Rate Units, Flex Units, and an approximately 12,992 square foot commercial/PDR/retail space that will be open to the public and is envisioned as a food and beverage themed Market Hall with space for one or more small scale production businesses (“**Market Hall**”).
- Building C1: Market Rate Units and an approximately 8,307 square foot child care center open to families in and outside of the Project (“**Childcare Center**”).
- Building C2: Affordable Units designed to attract a high quality affordable housing partner (anticipated to be BRIDGE Housing Corporation (“**BRIDGE**”)) (“**Affordable Housing Developer**”)) and strategically located nearest to transit to qualify for tax-credit and other affordable housing financing.
- All vertical development structures will be constructed with wood frame construction over two to three above grade stories of Type IA construction with portions of stair and elevator penthouses extending 15-feet in height above the roofs. The roofline will range between 35’ and 85’ with the lower elevations fronting Mission Street and in the northern portion of the Site adjacent to the existing residential buildings as provided in the Project Approvals. Building B and Building C1 are proposed to have a single basement level containing parking and building service and additional parking at grade (and on level 2 for Building B), while Building C2 will have its parking all at grade, including lifts that have parking pits below grade. Off-site landscaped areas and park programming will be included as part of the Project and have been designed to benefit both Project residents and the greater region, including the construction of the connection of Oak Avenue to Antoinette Lane (“**Oak Avenue Phase 1 Extension**”) and the landscaped road and parking

area connecting Mission Street (not including any future Oak Avenue to El Camino Real vehicular connection (“**Oak Avenue Phase 2 Extension**”), as shown on Sheets T-1, T-3, T-7, T-8, X-0 to X-5, L1-0, L3.0, L4.0, L7-0, L8-0, L8.1, L9.0, L11.0 on the Entitlement Resubmittal -3 Entitlements Comment Response) September 17, 2019 as amended by replacement sheets dated November 5, 2019 and described in the Project Approvals (collectively, “**Offsite Improvements**”) and payment to the City of \$5,500,000 for construction of Oak Avenue Phase 2 connecting Oak Avenue from Antoinette Lane to El Camino Real.

E. The Project Site is located in the El Camino Real/Chestnut Area Plan (and designated as El Camino Real Mixed Use North, High Intensity and High Density Residential) as well as the El Camino Real/Chestnut Area Plan – Residential High (ECR/C – RH) Zoning District. The City Council certified Environmental Impact Reports in accordance with the provisions of the California Environmental Quality Act, (Public Resources Code, §§ 21000, et seq. (“CEQA”) and CEQA Guidelines, which analyzed the potential environmental impacts of the development of the El Camino Real/Chestnut Area Plan (“ECR/CAP”) and Community Civic Campus Plan (the “**Civic Campus**”) (collectively, the “EIRs”). The City Council also adopted a Statements of Overriding Consideration for the El Camino Real/Chesnut Area EIR (“SOC”) in accordance with the provisions of CEQA and CEQA Guidelines for the EIRs, which carefully considered each significant and unavoidable impact identified in the EIRs and found that the significant environmental impacts are acceptable in light of the ECR/CAP and Civic Campus economic, legal, social, technological and other benefits. On November 13, 2019 by Resolution No. 151-2019, the City Council approved an Environmental Consistency Analysis for the Project prepared by the City in accordance with CEQA Guidelines § 15168 that confirmed that the Project would not result in any new significant environmental effects or a substantial increase in the severity of any previously identified effects beyond those disclosed and analyzed in the EIRs previously certified by City Council, require any new mitigation measures, and is consistent with the SOCs (“ECA”) and adopted a Mitigation Monitoring and Reporting Plan identifying all applicable mitigation measures from the EIRs that are applicable to the Project (“MMRP”).

F. On November 13, 2019, after duly noticed public hearing and review by the Planning Commission, the City Council also approved the following land use entitlements: Conditional Use Permit (for conditional uses, incentive bonuses and parking determination) in accordance with SSF Table 20.270.003 and Section 20.270.004(A) and Area Plan Table 4-1; Design Review in accordance with SSFMC Chapter 20.480; Vesting Tentative Tract Map in accordance with SSFMC Chapter 19.50 and Section 19.40.100; Build-To Line Waiver along Mission Road in accordance with SSFMC Code 20.270.004(C); Active Frontage Chief Planner Waiver for 50% Active Use along Mission Road in accordance with SSFMC Code 20.270.005(B)(4); Ground Floor Entrance Chief Planner Alternative Design Approval for Buildings C1 and C2 facing BART right of way and Colma Creek in accordance with SSFMC Code 20.270.005(G)(5); Transportation Demand Management in accordance with SSFMC Code 20.240.006; Parking Management Plan in accordance with SSFMC 20.270.005(H)(1); State Density Bonus Law for (1) 25% bonus on Parcel B from General Plan and Area Plan density in accordance with Government Code Section 65915(f)(1) and (2) development standard waiver from rear yard setback requirements set forth in 20.270.004(D)(1-4) for Buildings Parcels B, C1 and C2 fronting BART and Colma Creek in accordance with Government Code Section 65915(e); a Purchase and Sale Agreement; and this Development Agreement in accordance with SSFMC

Chapter 19.60. The entitlements listed in this Recital E and shown on Exhibit B are collectively referred to herein as the “**Project Approvals**.” The Project has been designed to fulfill the vision of the City’s General Plan, Housing Element, El Camino Real Master Plan, and the El Camino Real/Chestnut Area Plan for an active, transit-oriented mixed-use project that respects the existing surrounding neighborhoods and residents.

G. City has determined that the Project presents certain public benefits and opportunities which are advanced by City and Developer entering into this Agreement. This Agreement will, among other things, (1) reduce uncertainties in planning and provide for the orderly development of the Project; (2) provide needed residential development which helps the City meet its Regional Housing Needs Assessment pursuant to state housing law, including critically-needed affordable housing, in a strategic, transit-oriented location with a robust Transportation Demand Management and parking management program; (3) provide a childcare facility that is expected to accommodate 75-100 children with subsidies to ensure access to a broad range of households; (4) provide phased Oak Ave connection with new traffic signaling between Mission Road extending Oak Avenue over Colma Creek and into Antoinette Lane; (5) provide a Market Hall that will target smaller local businesses seeking retail and production space; (6) provide Mission Road sidewalk/landscaping installation to improve pedestrian facilities; (7) result in undergrounding utility lines; (8) provide on-site public art and a neighborhood-serving playground; (9) mitigate any significant environmental impacts consistent with the requirements set forth in the EIRs; (10) provide for and generate substantial revenues for the City in the form of one time and annual fees and exactions and other fiscal benefits including park and recreation fees, school impact fees (payable to SSF USD), public safety impact fees and bicycle and pedestrian impact fees; sewer fees, and (11) otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

H. In exchange for the benefits to City described in the preceding Recital, together with the other public benefits that will result from the development of the Project, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with the “**Applicable Law**” (defined in section 6.3 below), and therefore desires to enter into this Agreement.

I. On October 17, 2019, following a duly noticed public hearing, the Planning Commission recommended that the City Council approve this Agreement. And, on November 13, 2019, the City Council, after conducting a duly noticed public hearing, has found that this Agreement is consistent with the General Plan and Zoning Ordinance and has conducted all necessary proceedings in accordance with the City’s rules and regulations for the approval of this Agreement. In accordance with SSFMC section 19.60.120, the City Council, on December 11, 2019, at a duly noticed public hearing, adopted Ordinance No. 19-960 approving and authorizing the execution of this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties, pursuant to the authority contained in Government Code sections 65864 through 65869.5 and Chapter 19.60 of the South San Francisco Municipal Code and in consideration of the mutual covenants and agreements contained herein, agree as follows:

ARTICLE 1 DEFINITIONS

1.1 “**Administrative Project Amendment**” shall have that meaning set forth in Section 7.1 of this Agreement.

1.2 “**Administrative Agreement Amendment**” shall have that meaning set forth in Section 7.2 of this Agreement.

1.3 “**Affiliate of Developer**” shall have that meaning set forth in Section 8.1 of this Agreement.

1.4 “**Affordable Housing Agreement**” shall mean an agreement entered into by the Parties in accordance with the requirements of the South San Francisco Municipal Code Section 20.380.014 to restrict the Project’s Affordable Units to occupants meeting the applicable affordability criteria and to comply with the number of Affordable Units as defined in Recital D.

1.5 “**Affordable Housing Developer**” shall have that meaning set forth in Recital D of this Agreement.

1.6 “**Affordable Units**” shall have that meaning set forth in Recital D of this Agreement.

1.7 “**Agreement**” shall mean this Development Agreement.

1.8 “**Applicable Law**” shall have that meaning set forth in Section 6.3 of this Agreement.

1.9 “**Assessments**” shall have that meaning set forth in Exhibit C.

1.10 “**CEQA**” shall have that meaning set forth in Section 3.3 of this Agreement.

1.11 “**City**” shall mean the City of South San Francisco.

1.12 “**City Law**” shall have that meaning set forth in Section 6.5 of this Agreement.

1.13 “**Childcare Operator**” shall have that meaning set forth in Section 3.9.

1.14 “**Claims**” shall have that meaning set forth in Section 6.10 of this Agreement.

1.15 “**Control**” shall have that meaning set forth in Section 8.1 of this Agreement.

1.16 “**Controlled**” shall have that meaning set forth in Section 8.1 of this Agreement.

1.17 “**Controlling**” shall have that meaning set forth in Section 8.1 of this Agreement.

1.18 “**Deficiencies**” shall have that meaning set forth in Section 9.2 of this Agreement.

1.19 “**Developer**” shall mean SSF PUC Housing Partners, LLC, and any assignees pursuant to Article 8 of this Agreement.

1.20 “**Development Agreements Statute**” shall have that meaning set forth in Recital A of this Agreement.

1.21 “**Development Fees**” shall have that meaning set forth in Section 3.2 of this Agreement.

1.22 “**District**” shall mean any assessment or financing district(s) established by the City pursuant to the Community Facilities District Act of 1982 (Mello-Roos), Government Code Sections 53311 et seq., the Streets and Highways Code, Division 10 and 12, the Landscape and Lighting Act of 1972, or other similar law to finance all or part of the public improvements through the issuance of bonds and the imposition of assessments, fees, or taxes on the benefiting land, including, but not limited to, the Property.

1.23 “**ECA**” shall have that meaning set forth in Recital E of this Agreement.

1.24 “**Effective Date**” shall have that meaning set forth in Section 2.1 of this Agreement.

1.25 “**EIR**” shall have that meaning set forth in Section 3.1.

1.26 “**El Camino Real/Chestnut Area Plan**” or “**ECR/CAP**” shall have that meaning set forth in Recital E.

1.27 “**Flex Units**” shall mean, notwithstanding anything to the contrary in the Project Approvals or SSFMC, dwelling units which are integrated with the working space of artists, artisans and other craftspersons shall be permitted as an accessory use to such working space, when such dwelling units are occupied by a group of persons including no more than four adults, and where the occupancy meets all applicable provisions of the Building Code and Housing Code.

1.28 “**Force Majeure Delay**” shall have that meaning set forth in Section 10.3

1.29 “**GDP**” shall have that meaning set forth in Section 10.3

1.30 “**Indemnitees**” shall have that meaning set forth in Section 6.10 of this Agreement.

1.31 “**Judgment**” shall have that meaning set forth in Section 9.2 of this Agreement.

1.32 “**Mortgage**” shall mean any lien of mortgage, deed of trust, or other security interest (e.g., lease-leaseback agreement) in the Project or the Project Site given in exchange for financing of any kind.

1.33 “**Mortgagee**” shall mean the beneficiary of any Mortgage.

1.34 “**MMRP**” shall have that meaning set forth in Recital E of this Agreement.

1.35 “**Parties**” shall mean the Developer and City, collectively.

1.36 “**Periodic Review**” shall have that meaning set forth in Section 10.5 of this Agreement.

1.37 “**Project**” shall have that meaning set forth in Recital D of this Agreement.

1.38 “**Project Approvals**” shall have that meaning set forth in Recital F of this Agreement.

1.39 “**Project Site**” shall have that meaning set forth in Recital C of this Agreement.

1.40 “**Purchase and Sale Agreement and Joint Escrow Instructions Between City of South San and SSF PUC Housing Partners, LLC**” or “**PSA**” is defined as the “Purchase and Sale Agreement and Joint Escrow Instructions between the City of South San Francisco and SSF PUC Housing Partners LLC dated December 23, 2019, as approved by the San Mateo County Oversight Board on February 10, 2020 by Resolution No. 2020-09 as provided in the PSA.

1.41 “**Severe Economic Recession**” shall have that meaning set forth in Section 10.3

1.42 “**SSFMC**” shall have the meaning set forth in Recital B of this Agreement.

1.43 “**Subsequent Approvals**” shall mean those certain other land use approvals, entitlements, and permits in addition to the Project Approvals that are necessary or desirable for the Project. In particular, for example, the parties contemplate that Developer may, at its election, seek approvals for the following: amendments of the Project Approvals, design review approvals, unless determined not required pursuant to the further provisions of this Agreement, improvement agreements, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, rezonings, development agreements, use permits, sign permits and any amendments to, or repealing of, any of the foregoing.

1.44 “**Tax**” and “**Taxes**” shall not include any generally applicable City Business License Tax or locally imposed Sales Tax.

1.45 “**Term**” shall have that meaning set forth in Section 2.2 of this Agreement.

To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, in the PSA, and if not in the PSA, then by controlling law, including the SSFMC.

ARTICLE 2

EFFECTIVE DATE AND TERM

2.1 **Effective Date.** This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (“**Effective Date**”).

2.2 **Term.** The term of this Agreement (“**Term**”) shall commence upon the Effective Date and continue (unless this Agreement is otherwise terminated or extended as provided in this Agreement) until the earliest of (1) the issuance of a certificate of occupancy for all buildings in the Project or (2) ten (10) years plus one day after the Effective Date.

2.3 Compliance with Terms of the Purchase and Sale Agreement. Developer shall comply with all terms of the Purchase and Sale Agreement approved by the City and Developer on November 13, 2019 and the San Mateo Countywide Oversight Board on February 10, 2020 by Resolution No. 2020-09. A material default by Developer under the PSA shall be a material default under this Agreement. In the event the PSA is terminated under its terms prior to the transfer of the Property to the Developer, this Agreement shall terminate and have no further force or effect.

ARTICLE 3 OBLIGATIONS OF DEVELOPER

3.1 Obligations of Developer Generally. The Parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Developer's long term obligations set forth in this Agreement are in addition to Developer's agreement to perform all the applicable mitigation measures identified in the MMRP.

3.2 City Fees.

(a) Processing Fees and Charges. Developer shall pay those processing, building permit, inspection and plan checking fees and charges required by the City for processing applications and requests for Subsequent Approvals under the applicable non-discriminatory regulations in effect at the time such applications and requests are submitted to the City.

(b) Development Fees. Consistent with the terms of the Agreement, City shall have the right to impose only such development fees ("Development Fees") as have been adopted by City as of the Effective Date of this Agreement and at those rates in effect at the time of payment of the Development Fees, and which are identified and as set forth on Exhibit C. The Parties agree that the only increase in the Development Fees set forth in Section 2.2 of Exhibit C shall be the relevant index increase authorized by the enabling ordinance or resolution for each Development Fee set forth in Section 2.2 of Exhibit C as of the Effective Date of this Agreement. The Development Fees shall be paid at the time set forth on Exhibit C. This shall not prohibit City from imposing on Developer any fee or obligation that is imposed by a regional agency in accordance with state or federal obligations and required to be implemented by City.

3.3 Mitigation Measures. Developer shall comply with the Mitigation Measures identified and approved in the EIRs for the Project, in accordance with the CEQA or other law as identified and set forth on the MMRP.

3.4 Off-Site Improvements and Maintenance. The Parties shall implement all of the following with respect to the design, construction and maintenance of the Off-Site Improvements:

(a) Oak Avenue Extension. Based on the 35% drawings of Oak Avenue Phase 2 Extension provided by City to Developer, the Developer shall undertake design of Oak Avenue Phase 1 Extension and continue to advance design and approval (with BART, Caltrans, etc.) of Oak Avenue Phase 2 Extension concurrent with relevant design progress, but only so far as

necessary that reviewing departments can ensure a future design for Oak Avenue Phase 2 Extension is physically feasible. Developer shall design and construct Oak Avenue Phase 1 Extension at its own cost as described in the Project Approvals; provided, however, the City shall not impose requirements that will cause the cost (including actual and reasonable soft and hard costs of design (including design of Oak Avenue Phase 2 Extension), permitting and construction, but excluding any Developer mark up or project management fee) of Oak Avenue Phase 1 Extension (“**Oak Avenue Phase 1 Costs**”) to exceed **FIFTEEN MILLION EIGHT HUNDRED AND FIFTY THOUSAND DOLLARS (\$15,850,000)** (“**Maximum Oak Avenue Phase 1 Costs**”), and shall cooperate with the Developer to ensure any other governmental agencies’ requirements do not cause the cost to exceed the Maximum Oak Avenue Phase 1 Costs (including, but not limited to, expediting review and approvals of design modification and value engineering if necessary). City and Developer shall have the mutual right to approve the final design, cost and any change orders that will cause the Oak Avenue Phase 1 Costs to exceed **TEN MILLION THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$10,350,000)** for the Oak Avenue Phase 1 Extension (“**Maximum Oak Avenue Fair Share Contribution**”). Developer shall also pay the City, prior to the deadline set forth in the Schedule of Performance in the PSA, **FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000)** for final design (beyond 35% level) and construction costs for Oak Avenue Phase II Extension connecting Oak Avenue from Antoinette Lane to El Camino Real (“**Oak Avenue Phase II Extension Payment**”) and Developer shall cooperate with City and provide any necessary easements to allow construction of Oak Avenue Phase II as described in this sentence to the extent such necessary easement do not conflict with Project or frustrate the purpose of this Agreement. Developer shall provide City copies of and shall consult with City regarding all bids received and change orders for Oak Avenue Phase 1 Extension. Developer shall complete construction of Oak Avenue Phase 1 Extension in a manner consistent with the approved plans no later than as set forth in the Schedule of Performance set forth as Exhibit C to the PSA and incorporated herein by reference. With the City’s cooperation, the Developer shall be responsible for and shall use good faith and commercially reasonable efforts to design, implement and construct the Project, including Oak Avenue Phase 1 Extension such that the City’s future construction of Oak Avenue Phase 2 Extension at a later date is feasible. Developer shall not be responsible for the costs for completing designs of Oak Avenue Phase 2 Extension (beyond the initial feasibility determinations described herein) nor any costs of constructing Oak Avenue Phase 2 Extension. If the Oak Avenue Phase 1 Costs exceed the Maximum Oak Avenue Fair Share Contribution, the City will, upon submission of an invoice with substantiating cost invoices from the contractor that are reasonably acceptable to the City, reimburse the Developer for the Oak Avenue Phase 1 Costs incurred that exceed the Maximum Oak Avenue Fair Share Contribution, in an amount not to exceed **FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000)**. The City shall have the right to pay the amount in excess of the Maximum Oak Avenue Fair Share Contribution, up to an amount not to exceed **FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000)**, in ten equal annual payments over the period of 10 years from the date of acceptance of Oak Avenue Phase 1 Extension by the City. Any outstanding balance due after two years from the date of acceptance of Oak Avenue Phase 1 Extension shall accrue interest at the Local Agency Investment Fund Rate in effect as of two years from the date of acceptance of Oak Avenue Phase 1 Extension.

(b) City/BART/Kaiser ROW Property Improvements. Developer shall improve the City ROW Property, the BART ROW Property and the Kaiser ROW Property leading up to El Camino Real, west of the Creek, as shown on Sheets L1.0, L4.0, L7.0, L8.0, L9.0 of the

Entitlement Resubmittal -3 Entitlements Comment Response) September 17, 2019 as amended by replacement sheets dated November 5, 2019 and described in the Project Approvals, so that it is safe and inviting. Developer and City agree that the preferred switchback design leading from the lower level of Oak Avenue up to El Camino Real is the less steep, more meandering path. Developer shall use good faith and commercially reasonable efforts with City's Civic Campus design team to ensure parking needs are met in accordance with the approved plans for the Project so that the preferred switchback design can be accommodated.

(c) Mission Road Pedestrian Trail Connection. Developer shall pay to the City TWO HUNDRED THOUSAND (\$200,000) for costs associated with a proposed pedestrian trail connecting Mission Road to the Centennial Trail in the general vicinity of the intersection of Sequoia Avenue and Mission Road ("Mission Road Pedestrian Trail Connection"), no later than issuance of the certificate of occupancy for Building B1 or Building C1, whichever comes first. The Developer shall not be responsible for any other costs associated with the Mission Road Pedestrian Train Connection (including but not limited to design, permitting, construction or maintenance).

(d) Pedestrian Bridge Connection to Centennial Trail. Developer shall design and construct a pedestrian bridge and pathway connecting the Kaiser property to Centennial Trail as shown on Sheets T-3, L1.0, L2.0, L7.0, L8.0, L9.0 of the Entitlement Resubmittal -3 Entitlements Comment Response) September 17, 2019 as amended by replacement sheets dated November 5, 2019 and described in the Project Approvals ("Centennial Trail Bridge") at the same time as the construction of the Centennial Trail improvements required in the Project Approvals. The City shall not impose requirements that will cause the cost (including actual and reasonable soft and hard costs of design (including design of Centennial Trail Bridge), permitting and construction, but excluding any Developer mark up or project management fee) of the Centennial Trail Bridge ("Centennial Trail Bridge Costs") to exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) ("Maximum Centennial Trail Bridge Cost") and shall cooperate with the Developer to ensure any other governmental agencies' requirements do not cause the cost to exceed the Maximum Centennial Trail Bridge Cost (including, but not limited to, expediting review and approvals of design modification and value engineering if necessary). The design of the Centennial Trail Bridge shall include a pathway width of no more than ten feet and the total width of the bridge shall not exceed twenty feet, and shall be subject to approval by the City Manager, which approval shall not be unreasonably withheld or delayed. With the Developer's cooperation, the City shall secure control or ownership of any properties necessary for the Developer to construct and maintain the Centennial Trail Bridge, as provided in (f), below. Notwithstanding the Maximum Centennial Trail Bridge Cost, the City may, in its sole discretion, require architectural design enhancements to the Centennial Trail Bridge design and construction provided that the City shall pay for all Centennial Trail Bridge Costs related to such architectural design enhancements to the extent that such costs would exceed the Maximum Centennial Trail Bridge Cost.

(e) Project Maintenance. With the exception of publicly dedicated underground utilities, improvements to Mission Road, the bridge portion of the Oak Avenue Phase 1 Extension connecting to Mission Road and the Centennial Trail Bridge (broadly including any and all elements of the two bridges and bridge connection points) which shall be the responsibility of the public entity to which they are dedicated, Developer shall maintain, repair and replace as necessary

all onsite and offsite improvements that it constructs at a level consistent with the condition of improvements at the time of completion by the Developer or acceptance by the City to the extent it has, or the City provides (or obtains for the Developer) the right to construct and/or maintain such off-site improvements. Developer shall also maintain (i.e. mow, trim landscaping, remove trash, etc.) the surface area portion of BART-owned property west of Building B as shown on Exhibit A. In exchange for the use of the BART Open Space Property as part of the Project for public open space, Developer shall provide the maintenance for the improvements placed on the BART Open Space Property consistent with the maintenance agreement for such areas between the City and BART. City and Developer shall enter into a recordable form of maintenance agreement prior to issuance of the first certificate of occupancy for Building B or C1. In addition, Developer shall maintain the Property it acquires after close of escrow as required pursuant to Purchase and Sale Agreement.

(f) Acquisition of Off-Site Property Rights and Developer Deposit. With the Developer's cooperation and assistance in terms of preparing property descriptions and engineering drawings, the City shall be responsible for securing the rights or ownership for all of the following:

(i) the BART ROW Property, the Kaiser ROW Property necessary and other property interests necessary to complete Oak Avenue Phase 1 Extension as such property interests are shown on Sheets X-0, X-1, X-1.1, X-2, X-3, X-4, and X-5 of the Entitlement Resubmittal -3 Entitlements Comment Response) September 17, 2019 as amended by replacement sheets dated November 5, 2019 and described in the Project Approvals ("Oak Avenue ROW Properties").

(ii) any properties necessary for the Developer to construct and maintain all of the Off-Site Improvements, including all park and open space and trail improvements as required under this Agreement ("Off-Site Property Rights Agreements").

Developer shall upon written request from the City, pay the City up to a maximum of FIVE HUNDRED THOUSAND (\$500,000) ("Maximum Off-Site Acquisitions Deposit Amount") for actual costs (including appraisals, title fees, preparation of property conveyance documents, litigation expenses, etc.) incurred by the City to acquire the Oak Avenue ROW Properties and Off-Site Property Rights Agreements hereunder. Developer shall make an initial payment to the City of TWO HUNDRED AND FIFTY THOUSAND (\$250,000) not later than sixty days after Close of Escrow (as defined in the PSA) and shall make further deposits upon written request from the City up to the Maximum Off-Site Acquisitions Deposit Amount. City will retain the amounts paid in a separate line item account ("Off-Site Property Acquisition Deposit Account") and shall only use such funds for actual costs incurred to acquire the properties provided herein. City shall provide Developer quarterly reports showing the amount of funds used from the Off-Site Property Acquisition Deposit Account and property interests acquired. Any unused funds remaining in the Off-Site Property Acquisition Deposit Account at the commencement of construction of Oak Avenue Phase 1 Extension shall be refunded to the Developer.

(g) Off-Site Improvement Permitting. With the City's cooperation, the Developer shall be responsible for obtaining any ministerial or administrative permits to construct such Off-Site Improvements consistent with applicable law, the Project Approvals and the Off-Site Property Rights Agreements.

3.5 Affordable Housing. Developer acknowledges and agrees that Building C2 will be subject to recorded covenants that will restrict use of Building C2 for the Affordable Units for a term of not less than fifty-five (55) years, commencing upon the issuance of a final certificate of occupancy for Building C2, as further set forth in a recorded Affordable Housing Agreement in a form to be approved by the City Council, except in the case of BRIDGE (or an Affiliate of BRIDGE pursuant to Section 8.1(b), below) in substantially the form attached hereto as Exhibit D, which shall be recorded in the Official Records at the time specified in the PSA. The Affordable Housing Agreement shall be reviewed prior to the issuance of the certificate of occupancy for Building C2, and amended by mutual agreement of the Parties if necessary to reflect actual built conditions consistent with this Agreement. Prior to issuance of building permits for Building C2, the applicant shall execute and record the Affordable Housing Agreement referenced herein and such Affordable Housing Agreement shall be consistent with SSFMC Chapter 20.380, Inclusionary Housing Regulations, including a preference for individuals who live and/or work in South San Francisco consistent with Federal and State Fair Housing laws.

3.6 Market Hall. Developer shall comply with the following terms with respect to the Market Hall portion of the Project:

- (a) Within two (2) years of the start of construction of Building B, Developer shall enter into an agreement with a qualified commercial broker to lease the commercial and retail space(s) in the Market Hall.
- (b) Within the following thirty (30) days following execution of the broker agreement, Developer shall provide regular retail leasing program updates to the City (approximately monthly until initial lease up of at least 75% of the space). Such reports shall identify potential tenants contracted and the results of the contact.
- (c) The Market Hall shall be designed and constructed consistent with the Project Approvals, and the Developer shall complete the “Basic Improvements” to the Market Hall prior to issuance of certificate of occupancy for the residential units in Building B. “**Basic Improvements**” for the purpose of this section shall mean access to mechanical, electrical and plumbing connections (which must include drain and waste, grease traps, gas lines, and hoods sufficient to accommodate restaurant uses), heating, ventilation and air conditioning (HVAC), and electric subpanels for future use.

3.7 Public Art Commitment. Developer shall install public art, with a minimum value of \$50,000 (or more in the sole discretion of the Developer) as part of the Project. Such public art shall be installed prior to issuance of the certificate of occupancy for the first of Building B and C1. The proposed public art shall be subject to the reasonable approval by the City, consistent with this Section 3.7.

3.8 Neighborhood Playground. Developer shall design the Project to include a playground feature sized to support the Project and the neighborhood (not a citywide destination) and shall construct the neighborhood playground prior to the certificate of occupancy for the first of Buildings B and C1.

3.9 Childcare Center. Developer shall design and construct the Childcare Center, and shall enter into an agreement with a qualified childcare operator (anticipated to be Palcare) (“**Childcare Operator**”). The Developer shall provide up to a maximum ten percent (10%) subsidy for childcare services if and to the extent that the Childcare Operator is unable, after commercially reasonable efforts, to obtain grants of at least twenty five percent (25%). For illustrative examples only, if the Childcare Operator is able to obtain grants to subsidize (i) 25% or more of children under care, no subsidy is required, (ii) 20% of the children under care, the Developer shall provide subsidies to 5% of the children under care, for a total of 25%, or (iii) 10% of the children under care, the Developer shall provide subsidies to 10% of the children under care, for a total of 20%. The subsidy scale shall be similar to the subsidy scale used by other qualified operators such as Palcare. The Childcare Center shall be constructed to warm shell condition (considered ready to lease and ready for tenant improvements) and shall, prior to the final certificate of occupancy for Building C1, either: (i) have entered an agreement with the Childcare Operator and completed the required tenant improvements for the Childcare Center, or (ii) have both (A) demonstrated to the City’s reasonable satisfaction its good faith efforts to do so and a lack or unavailability of a Childcare Operator and (B) deposited the full amount of the required Child Care Fee that would have been required for the Project assuming the Childcare Center was not part of the Project, to be held as a deposit by the City until the Childcare Center is open (and which can be used by the City to improve the Childcare Center if the Developer fails to perform and refunded to the Developer if the Developer performs) (“**Childcare Fee Deposit**”). If the Childcare Center tenant improvements are not constructed within six months of the issuance of a final certificate of occupancy for the residential units in Building C1, City and its contractor or a contractor retained by another Childcare Center operator approved by the City and Developer shall have the right to access the Childcare Center space and construct tenant improvements reasonably necessary to operate the Childcare Center with the costs of such tenant improvements paid for by the Developer with funding initially from the Childcare Fee Deposit described herein and paid by the Developer. Developer shall continue to use diligent and good faith efforts to enter an agreement with a Childcare Operator, and City shall cooperate with Developer to identify Childcare Operators. Upon the completion of the Childcare Center, any remaining amounts in the Childcare Fee Deposit shall be refunded to the Developer.

3.10 Transportation Demand Management and Neighborhood Parking Management and Mitigation Plan. The Developer shall implement both a Transportation Demand Management (“**TDM**”) Plan and Neighborhood Parking Management and Mitigation Plan (“**Parking Plan**”) to reduce the use of single occupancy vehicles and encourage the use of public transit and alternate modes of transportation, reduce traffic, and address the concerns of the surrounding neighborhood (Sunshine Gardens) that future tenants and guests of the Project will park their vehicles on the streets within the surrounding neighborhood. As part of the Project’s Conditions of Approval, a Final TDM Plan and Parking Plan will be adopted and approved by the City. The TDM shall be designed to achieve a goal of 35% alternative mode usage by employee commuters during commute hours for the Project and 28% alternative mode usage by residences overall.

In the event that the City Manager or her/his designee determines that TDM goals are not being achieved or the Parking Plan does not adequately address persistent parking issues impacting surrounding residential neighborhoods, the Developer shall work in good faith with the City to implement additional parking mitigation measures, which will include one or a combination of the following:

- No Street Parking for Project. The Parking Plan will be designed to ensure that Project residents and tenants and guests/visitors will not park on the streets in the surrounding neighborhood, including education, enforceable lease terms, on-site parking management and enforcement and a designated contact for complaints.
- Bundle Parking. Except up to a maximum of 20% of the Market Rate Units, the Developer shall bundle parking with apartment units.
- Temporary Transportation Subsidy. Developer will implement temporary transportation subsidies for residences to utilize public transportation during commute hours.
- Develop a resident parking program (RPP). At the City's request pursuant to the City's Preferential Permit Parking Program pursuant to SSFMC Chapter 11.70, Developer will cooperate with and support City efforts to implement a neighborhood resident parking program. Upon a determination by the City to implement a neighborhood parking program pursuant to this provision and written notice by the City to the Developer, Developer shall pay the City \$25,000 to be used towards the implementation of neighborhood resident parking program. Residents in the permit parking area, excluding residents of the Project, would receive no cost parking permits pursuant to the program. If the City identifies cars from the Project, the Developer shall cooperate with the City to notify such residents and take actions to enforce the no neighborhood parking rules in its leases.
- Contingency/Enforcement. Project Sponsor shall cooperate with the City to provide additional enforcement mechanisms and resources, including, if requested by the City after determining in its reasonable judgment that the Parking Plan is not adequately addressing parking issues as designed and no other mechanisms are available or feasible, the deposit of up to one time maximum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) with the City in an account earmarked for the City to pay parking enforcement personnel to assist the City and Developer to implement and enforce the Parking Plan. If the deposit (or any portion thereof) is not used within five (5) years of the date of deposit, it shall be refunded to the Developer.

3.11 Utility Relocation and Replacement. Developer, at its sole cost, shall be responsible for all on-site work to relocate and upgrade required utilities and infrastructure on the Property.

ARTICLE 4 OBLIGATIONS OF CITY

4.1 Obligations of City Generally. The Parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to purchase Property and site the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.

4.2 Protection of Vested Rights. Except as authorized in Section 6.9, City shall not support, adopt, or enact any City Law, or take any other action which would violate the express provisions or intent of the Project Approvals or the Subsequent Approvals.

4.3 Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Developer in reserving such capacity for sewer and water services as may be necessary to serve the Project.

4.4 Developer's Right to Rebuild. City agrees that Developer may renovate or rebuild all or any part of the Project within the Term of this Agreement should it become necessary due to damage or destruction. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

4.5 Expedited Plan Check Process. The City agrees to provide an expedited plan check process for the approval of Project drawings consistent with its existing practices for expedited plan checks. Developer agrees to pay the City's established fees for expedited plan check services. The City shall use reasonable efforts to provide such plan checks within 3 weeks of a submittal that meets the requirements of Section 5.2. The City acknowledges that the City's timely processing of Subsequent Approvals and plan checks is essential to the Developer's ability to achieve the schedule under the PSA.

4.6 Project/Off-Site Improvements/ Civic Campus Coordination. The City shall perform those obligations of the City set forth in Article 3, which the City acknowledges are essential for the Developer to perform its obligations in Article 3. The City and Developer acknowledge and understand that the Civic Campus Project is a City-owned and sponsored project adjacent to the Project. The City and Developer shall use good faith and diligent efforts to communicate, cooperate and coordinate with each other during construction of the Civic Campus Project and Project.

ARTICLE 5 **COOPERATION - IMPLEMENTATION**

5.1 Processing Application for Subsequent Approvals. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions.

5.2 Timely Submittals By Developer. Developer acknowledges that City cannot expedite processing Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary required materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

5.3 Timely Processing By City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation: (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. City shall ensure that adequate staff is available, and shall authorize overtime staff assistance as may be necessary, to timely process such Subsequent Approval application.

5.4 Denial of Subsequent Approval Application. The City may only deny an application for a Subsequent Approval only if such application does not comply with the Agreement or Applicable Law (as defined below) or with any state or federal law, regulations, plans, or policies as set forth in Section 6.9.

5.5 Other Government Permits. Except those approvals identified in Section 4.6, which are the City's obligation to obtain, at Developer's sole discretion and in accordance with Developer's construction schedule and terms of the PSA, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City, at Developer's expense, shall cooperate with Developer in its efforts to obtain such permits and approvals and shall, from time to time, at the request of Developer, use its reasonable efforts to assist Developer to ensure the timely availability of such permits and approvals.

5.6 Assessment Districts or Other Funding Mechanisms.

(a) Existing Fees. As set forth in Section 3.2(b), above, the Parties understand and agree that as of the Effective Date the fees, exactions, and payments listed in Exhibit C are the only City fees and exactions that apply to the Project, subject to the credits and exemptions identified on Exhibit C. Except for those fees and exactions listed in Exhibit C, City is unaware of any pending efforts to initiate, or consider applications for new or increased fees, exactions, or assessments covering the Project Site, or any portion thereof that would apply to the Project prior to the Effective Date.

(b) Future Fees, Taxes, and Assessments. City understands that long term assurances by City concerning fees, taxes and assessments are a material consideration for Developer agreeing to purchase the Property from the City and enter this Agreement and to pay long term fees, taxes and assessments described in this Agreement. In light of the commitment to construct Oak Avenue Phase 1 Extension as set forth in Section 3.4, the Project shall be exempt from any District formed by the City related to Oak Avenue Phase 1 or Oak Avenue Phase 2 construction only in the future.

ARTICLE 6

STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

6.1 Vested Right to Develop. Developer shall have a vested right to develop the Project on the Project Site in accordance with the terms and conditions of this Agreement. Nothing in this section shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.

6.2 Permitted Uses Vested by This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk, and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals, provided, however, that no further design review or other discretionary approvals or public hearings shall be required except for review of minor changes to the Project Approvals by the Chief Planner as provided in this Agreement. The permitted uses for the Project shall be those uses listed as "permitted" in the Project Approvals, as may be amended from time to time in accordance with this Agreement.

6.3 Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the Project (the "**Applicable Law**") shall be those set forth in this Agreement and the Project Approvals, and, with respect to matters not addressed by this Agreement or the Project Approvals, those rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing of construction, densities, design, heights, fees, exactions, and taxes in force and effect on the Effective Date of this Agreement.

6.4 Uniform Codes. City may apply to the Project Site, at any time during the Term, then current Uniform Building Code and other uniform construction codes, and City's then current design and construction standards for road and storm drain facilities, provided any such uniform code or standard has been adopted and uniformly applied by City on a citywide basis and provided that no such code or standard is adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.

6.5 No Conflicting Enactments. Except as authorized in Section 6.9, City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "**City Law**") that is in conflict with Applicable Law or this Agreement or that reduces the development rights or assurances provided by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to conflict with Applicable Law or this Agreement or reduce the development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

- (a) Change any land use designation or permitted use of the Project Site;

(b) Limit or control the availability of public utilities, services, or facilities, or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;

(c) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued);

(d) Limit or control the rate, timing, phasing, or sequencing of the approval, development or construction of all or any part of the Project in any manner;

(e) Result in Developer having to substantially delay construction of the Project or require the issuance of additional permits or approvals by the City other than those required by Applicable Law;

(f) Establish, enact, increase, or impose against the Project or Project Site any fees, taxes (including without limitation general, special and excise taxes but excluding any increased local (city or county) sales tax or increases city business license tax), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities;

(g) Impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Law; or

(h) Limit the processing or procuring of applications and approvals of Subsequent Approvals.

6.6 Initiatives and Referenda.

(a) If any City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement, such Law shall not apply to the Project.

(b) Except as authorized in Section 6.9, without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within the City, or portions of the City, shall apply to the Project.

(c) To the maximum extent permitted by law, City shall prevent any City Law from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect.

(d) Developer reserves the right to challenge in court any City Law that would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement.

6.7 Environmental Mitigation. The Parties understand that the EIRs, ECA and MMRP were intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to the EIRs, City agrees to use the EIRs, ECA and MMRP in connection with the processing of any Subsequent Approval to the maximum extent allowed by law and not to impose on the Project any mitigation measures other than those specifically imposed by the Project Approvals, EIRs, ECA and MMRP, or specifically required by CEQA or other Applicable Law.

6.8 Life of Subdivision Maps, Development Approvals, and Permits. The term of any subdivision map or any other map, permit, rezoning, or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the longer of the Term of this Agreement (including any extensions) or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect. The Term of this Agreement and the term of any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which a development moratorium (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project or a lawsuit involving any such development approvals or permits is pending.

6.9 State and Federal Law. As provided in Government Code section 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically mandated and required by state or federal laws and regulations. In the event of any changes required by state or federal laws or regulations, the Developer and City shall meet and confer in good faith to determine what, if any, modifications to this Agreement and/or the Project Approvals would allow the Project and City to comply with such state or federal law or regulation while preserving to the maximum extent feasible the spirit and intent of the Parties in this Agreement and the Project Approvals.

6.10 Prevailing Wage. Developer and its contractors and agents shall comply with California Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto (“**Prevailing Wage Laws**”), and shall be responsible for carrying out the requirements of such provisions. Developer shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Developer’s expense.

To the fullest extent permitted by law, Developer shall indemnify, defend (with counsel approved by City) and hold the City, and their respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) which directly or

indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781), the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City, or Developer's deposit with the City of any of the insurance policies described in this Agreement. The provisions of this Section 6.10 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer's indemnification obligations set forth in this section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees.

6.11 Timing and Review of Project Construction and Completion. Except as expressly provided in the PSA or Project Approvals, Developer shall have the vested right to develop the Project in such order, at such rate and at such times as the Developer deems appropriate in the exercise of its business judgment. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such Parties' agreement, it is the desire of the Parties hereto to avoid that result. The Parties acknowledge that, except as otherwise provided for in the PSA and/or Project Approvals, Developer shall have the vested right to develop the Property in such order and at such rate and at such times as the Developer deems appropriate in the exercise of its business judgment.

ARTICLE 7 AMENDMENT

7.1 Amendment of Project Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) **Administrative Project Amendments.** Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the Chief Planner or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, City Council Direction and Applicable Law. If the Chief Planner or his/her designee finds that the proposed amendment or modification is minor, consistent with this Agreement, City Council Direction and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the Addendum or EIRs, the amendment shall be determined to be an "**Administrative Project Amendment**" and the Chief Planner or his/her designee may, except to the extent otherwise required by law, approve

the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor alterations in vehicle circulation patterns or vehicle access points, location of parking stalls on the site, number of required parking stalls if City development standards allow, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the residential unit mix (number of one, two or three bedroom units), location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.

(b) Non-Administrative Project Amendments. Any request by Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

7.2 Amendment of this Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties hereto or their successors in interest, as follows:

(c) Administrative Agreement Amendments. Any amendment to this Agreement which does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions, or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer, shall be considered an "**Administrative Agreement Amendment**" and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. Administrative Agreement Amendments may be approved by the City Manager or, in the sole discretion of the City Manager, the City Manager may refer any proposed Administrative Agreement Amendment to the City Council for consideration and approval or denial.

(d) Other Agreement Amendments. Any amendment to this Agreement other than an Administrative Agreement Amendment shall be subject to recommendation by the Planning Commission (by advisory resolution) and approval by the City Council (by ordinance) following a duly noticed public hearing before the Planning Commission and City Council, consistent with Government Code sections 65867 and 65867.5.

(e) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, or a Subsequent Approval shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement.

ARTICLE 8

ASSIGNMENT, TRANSFER AND NOTICE

8.1 Assignment and Transfer. Developer may transfer or assign all or any portion of its interests, rights, or obligations under the Agreement and the Project approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or lessees of lots, parcels, or facilities. Prior to the issuance of the a certificate of occupancy for the Project (or applicable portion thereof), neither City nor Developer may assign its rights or delegate its duties under this Agreement, except for Developer Permitted Transfers as defined below, without (i) the express written consent of the other Party, which consent will not be unreasonably withheld or delayed and (ii) a concurrent assignment of the PSA in accordance with Section 9.1 of the PSA. If Developer proposes an assignment in relation to the entire Property or Parcels B and/or C1 separately (each a “**Property Transfer**”), Developer will seek City’s prior written consent to such Property Transfer, which consent will not be unreasonably withheld or delayed. City may refuse to give consent to a proposed Property Transfer only if, in light of the proposed transferee’s reputation and financial resources, such transferee would not, in City’s reasonable opinion, be able to perform the obligations proposed to be assumed by such transferee, and such determinations will be made by the City Manager and will be appealable by Developer to the City Council. Prior to any Property Transfer, the Developer and assignee shall enter into an assignment and assumption agreement that clearly assigns the rights and obligations between the parties, and subject to prior approval, which shall not be unreasonably be withheld or delayed, of the City Manager and the City Attorney. Notwithstanding the preceding language, any proposed assignment of Site C2 separately (“**Affordable Property Transfer**”) to a party other than BRIDGE or an Affiliate of BRIDGE, including the form of assignment and assumption agreement and Affordable Housing Covenant, shall require the prior consent of the City Council.

Notwithstanding any other provision of this Agreement to the contrary, each of following transfers are permitted and shall not require City consent under this Section 8.1 (each a “**Developer Permitted Transfer**”):

- (a) Any transfer for financing purposes to secure the funds necessary for construction and/or permanent financing of the Project, including but not limited to any tax credit financing for the Affordable Units;
- (b) An assignment of this Agreement to an Affiliate of Developer (except that Affordable Property Transfer to an Affiliate of Developer shall not be a Developer Permitted Transfer);
- (c) An Affordable Property Transfer to BRIDGE, or an Affiliate of BRIDGE. For the purposes of this section, an "**Affiliate of BRIDGE**" means an entity that is directly or indirectly controlling, controlled by, or under common control of BRIDGE Housing Corporation, including but not limited to a tax credit partnership in which BRIDGE or an Affiliate of BRIDGE is the managing general partner. For any Affordable Property Transfer to BRIDGE or an Affiliate of BRIDGE, the Developer and assignee shall enter into an assignment and assumption agreement in substantially the form set forth in Exhibit E, with the final form of the assignment and assumption agreement subject to approval by the City Manager;

- (d) The sale or lease of the Child Care Center to a Childcare Operator, as defined in the Development Agreement;
- (e) Transfers of common area to a property owners association;
- (f) Dedications and grants of easements and rights of way required in accordance with the Project Approvals; or
- (g) Any leasing activity.

For the purposes of this Section 8.1, “**Affiliate of Developer**” means an entity or person that is directly or indirectly controlling, controlled by, or under common control with Developer. For the purposes of this definition, “**control**” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity or a person, whether through the ownership of voting securities, by contract, or otherwise, and the terms “**controlling**” and “**controlled**” have the meanings correlative to the foregoing.

ARTICLE 9

COOPERATION IN THE EVENT OF LEGAL CHALLENGE

9.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to the Agreement challenging the validity of any provision of the Agreement or any Project approval, the Parties will cooperate in defending such action or proceeding. City shall promptly (within five business days) notify Developer of any such action against City. If City fails promptly to notify Developer of any legal action against City or if City fails to cooperate in the defense, Developer will not thereafter be responsible for City’s defense. The Parties will use best efforts to select mutually agreeable legal counsel to defend such action, and Developer will pay compensation for such legal counsel (including City Attorney time and overhead for the defense of such action), but will exclude other City staff overhead costs and normal day-to-day business expenses incurred by City. Developer’s obligation to pay for legal counsel will extend to fees incurred on appeal. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel and Developer will pay its and the City’s legal fees and costs. Developer shall reimburse the City for all reasonable court costs and attorneys’ fees expended by the City in defense of any such action or other proceeding or payable to any prevailing plaintiff/petitioner.

9.2 Reapproval. If, as a result of any administrative, legal, or equitable action or other proceeding, all or any portion of the Agreement or the Project approvals are set aside or otherwise made ineffective by any judgment in such action or proceeding (“**Judgment**”), based on procedural, substantive or other deficiencies (“**Deficiencies**”), the Parties will use their respective best efforts to sustain and reenact or readopt the Agreement, and/or the Project approvals, that the Deficiencies related to, unless the Parties mutually agree in writing to act otherwise:

- (a) If any Judgment requires reconsideration or consideration by City of the Agreement or any Project approval, then the City will consider or reconsider that matter in a manner consistent with the intent of the Agreement and with Applicable Law. If any such Judgment invalidates or otherwise makes ineffective all or any portion of the Agreement or Project

approval, then the Parties will cooperate and will cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of the Agreement and with Applicable Law. City will then consider readopting or reenacting the Agreement, or the Project approval, or any portion thereof, to which the Deficiencies related.

(b) Acting in a manner consistent with the intent of the Agreement includes, but is not limited to, recognizing that the Parties intend that Developer may develop the Project as described in the Agreement, and adopting such ordinances, resolutions, and other enactments as are necessary to readopt or reenact all or any portion of the Agreement or Project approvals without contravening the Judgment.

ARTICLE 10 DEFAULT; REMEDIES; TERMINATION

10.1 Defaults. Any failure by either Party to perform any term or provision of the Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party (unless such period is extended by mutual written consent), will constitute a default under the Agreement. Any notice given will specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, will be deemed to be a cure within such 30-day period. Upon the occurrence of a default under the Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of the Agreement or, in the event of a material default, terminate the Agreement. If the default is cured, then no default will exist and the noticing party shall take no further action.

10.2 Termination. If City elects to consider terminating the Agreement due to a material default of Developer, then City will give a notice of intent to terminate the Agreement and the matter will be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. Developer will have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate the Agreement, City will give written notice of termination of the Agreement to Developer by certified mail and the Agreement will thereby be terminated sixty (60) days thereafter.

10.3 Enforced Delay; Extension of Time of Performance. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes and labor disputes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation and arbitration, including court delays; legal challenges to this Agreement, the PSA, the Project Approvals, or any other approval required for the Project or any initiatives or referenda regarding the same; environmental conditions that have not been previously disclosed or discovered or that could not have been discovered with reasonable diligence that delays the construction or development of the Property or any portion thereof; unusually severe weather but only to the extent that such weather or its effects (including,

without limitation, dry out time) result in delays that cumulatively exceed thirty (30) days for every winter season occurring after commencement of construction of the Project; acts or omissions of the other party; or acts or failures to act of any public or governmental agency or entity (except that acts or failures to act of City shall not excuse performance by City); moratorium; or a Severe Economic Recession (each a “**Force Majeure Delay**”). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause. If Notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such Notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Developer’s inability or failure to obtain financing or otherwise timely satisfy shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay unless such inability, failure or delay is a direct result of a Severe Economic Recession. “**Severe Economic Recession**” means a decline in the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of United States Gross Domestic Product (“**GDP**”) published by the United States Department of Commerce Bureau of Economic Analysis (and not subsequent monthly revisions), lasting more than four (4) consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession

10.4 Legal Action. Either Party may institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement in the Agreement, enjoin any threatened or attempted violation thereof, and enforce by specific performance or declaratory relief the obligations and rights of the Parties thereto. Except as provided in Section 10.1, the sole and exclusive remedies for any default or violation of the Agreement will be specific performance or declaratory relief. In any proceeding brought to enforce the Agreement, the prevailing Party will be entitled to recover from the unsuccessful Party all costs, expenses and reasonable attorney’s fees incurred by the prevailing party in the enforcement proceeding.

10.5 Periodic Review.

(a) **Conducting the Periodic Review.** Throughout the Term of this Agreement, at least once every twelve (12) months following the Effective Date of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (“**Periodic Review**”) shall be conducted by the Chief Planner or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code section 65865.1.

(b) **Developer Submission of Periodic Review Report.** Annually commencing one year from the Effective Date and continuing through termination of this agreement, Developer shall submit a report to the Chief Planner stating the Developer’s good faith compliance with terms of the Agreement.

(c) **Good Faith Compliance Review.** During the Periodic Review, the Chief Planner shall set a meeting to consider the Developer’s good-faith compliance with the terms of this Agreement. Developer shall be permitted an opportunity to respond to City’s evaluation of

Developer's performance, either orally at the meeting or in a supplemental written statement, at Developer's election. Such response shall be made to the Chief Planner. At the conclusion of the Periodic Review, the Chief Planner shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the Chief Planner shall be appealable to the City Council. If the Chief Planner finds and determines that Developer has not complied with such terms and conditions, the Chief Planner may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in Government Code sections 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be borne by Developer.

(d) Failure to Properly Conduct Periodic Review. If City fails, during any calendar year, to either: (i) conduct the Periodic Review or (ii) notify Developer in writing of City's determination, pursuant to a Periodic Review, as to Developer's compliance with the terms of this Agreement and such failure remains uncured as of December 31 of any year during the term of this Agreement, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.

(e) Written Notice of Compliance. With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.

10.6 California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Mateo County, California.

10.7 Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this section shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to by the parties to such meetings.

10.8 Attorneys' Fees. In any legal action or other proceeding brought by either Party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.

10.9 Hold Harmless. Developer shall hold City and its elected and appointed officers, agents, employees, and representatives harmless from claims, costs, and liabilities for any personal injury, death, or property damage which is a result of, or alleged to be the result of, the construction of the Project, or of operations performed under this Agreement by Developer or by Developer's contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, agents or employees. Nothing in this

section shall be construed to mean that Developer shall hold City harmless from any claims of personal injury, death or property damage arising from, or alleged to arise from, any gross negligence or willful misconduct on the part of City, its elected and appointed representatives, offices, agents and employees.

ARTICLE 11 MISCELLANEOUS

11.1 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

11.2 No Agency. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

11.3 Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations, and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code section 65866.

11.4 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

11.5 Other Necessary Acts and City Approvals. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise by this Agreement or applicable law.

11.6 Construction. Each reference in this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval, or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

11.7 Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

11.8 Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site, and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.

11.9 Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by email or telefacsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the 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:

If to City, to: City of South San Francisco
400 Grand Avenue
Attn: City Manager
South San Francisco, CA 94080
Phone: (650) 877-8500
Fax: (650) 829-6609

With a Copy to: Meyers, Nave, Riback, Silver & Wilson
555 12th Street Suite 1500
Oakland, CA 94607
Attn: Sky Woodruff, City Attorney
Phone: (510) 808-2000
Fax: (510) 444-1108

If to Developer, to: SSF PUC Housing Partners, LLC
Attn: Eric Tao
c/o L37 Partners
500 Sansome, Ste 750
San Francisco, CA 94111
Phone: (415) 394-9016
Email: eric@L37partners.com

With Copies to: Holland & Knight
50 California Street, #2500
San Francisco, CA 94111
Attn: Tamsen Plume
Phone: (415) 743-9461
Email: tamsen.plume@hklaw.com

Brookfield Residential
500 La Gonda Way, Suite 100
Danville, CA 94526
Attention: Josh Roden
Phone: (925) 743-8000
Email: josh.roden@brookfieldrp.com

11.10 Estoppel Certificates. A Party may, at any time during the term of this Agreement, and from time to time, deliver written notice to another Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The requesting Party shall be responsible for all reasonable costs incurred by the Party from which such certification is requested and shall reimburse such costs within thirty (30) days of receiving the certifying Party's request for reimbursement. The Party receiving a

request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Seller acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

11.11 Mortgagee Protection. After Close of Escrow, no violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor of Developer to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, of this Agreement whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. Specifically:

(a) **Mortgagee Not Obligated; Mortgagee as Transferee.** No Mortgagee shall have any obligation or duty under this Agreement, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement project, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of City, under this Agreement, unless and until such Mortgagee has received a transfer or assignment of rights pursuant to Article 8.

(b) **Notice of Default to Mortgagee: Right of Mortgagee to Cure.** If the City receives notice from a Mortgagee requesting a copy of any notice of an event of default given Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a Default. Such Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in City's notice within the applicable time periods for cure specified in this Agreement.

(c) **Priority of Mortgages.** For purposes of exercising any remedy of a Mortgagee pursuant to this Article, or for becoming an assignee or transferee in the manner specified in Section 8.1, applicable law shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

11.12 Entire Agreement, Counterparts And Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 32 pages and five (5) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Description and Diagram of Project Site

Exhibit B: List of Project Approvals

Exhibit C: Applicable Laws & City Fees, Exactions, and Payments

Exhibit D: Form of Affordable Housing Agreement (BRIDGE)

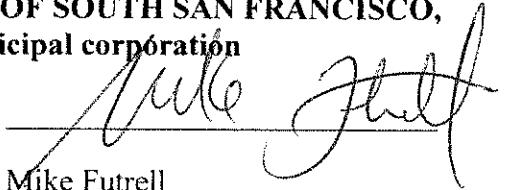
Exhibit E: Form of Site C2 (Affordable) Assignment and Assumption Agreement (BRIDGE)

11.13 Recordation Of Development Agreement. Pursuant to Government Code section 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of San Mateo. The Parties agree that in light of the Purchase and Sale Agreement and Joint Escrow Instructions Between City of South San and SSF PUC Housing Partners, LLC, the Parties will place this fully executed Agreement into escrow with instructions to record concurrent with a Closing, as defined under the PSA.

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

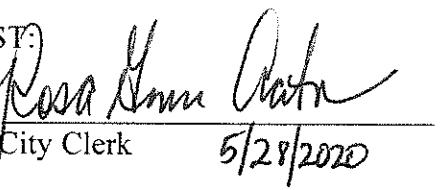
CITY

**CITY OF SOUTH SAN FRANCISCO,
a municipal corporation**

By: 

Name: Mike Futrell
City Manager

ATTEST:

By: 

City Clerk

5/28/2020

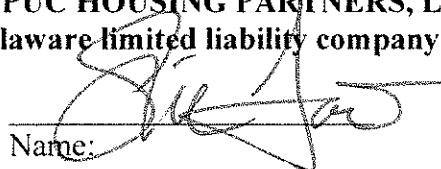
APPROVED AS TO FORM:

By: 

City Attorney

DEVELOPER

**SSF PUC HOUSING PARTNERS, LLC,
a Delaware limited liability company**

By: 

Name:

Title: *Authorized Signatory*

CALIFORNIA NOTARY ACKNOWLEDGEMENT (INDIVIDUAL)

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.

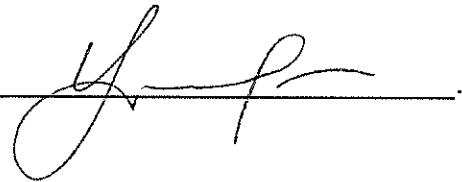
State of California
County of San Francisco

On April 29, 2020 before me, Yvonne Ho, Notary Public (insert name and title of the officer), personally appeared Eric Tao, 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(jes), 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.

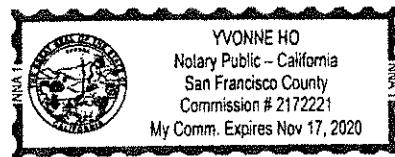
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

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 Mateo)On May 27, 2020 before me, Marie Ellen Patea, Notary Public,

Date

Here Insert Name and Title of the Officer

personally appeared Charles Michael Furrell

Name(s) of Signer(s)

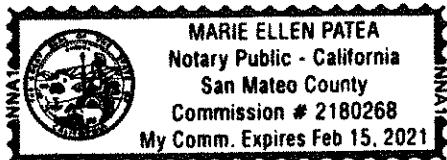
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached DocumentTitle or Type of Document: Dev Agmt. SSF FVC Housing Document Date: Jan 10, 2020Number of Pages: 32 + Signer(s) Other Than Named Above: Abby**Capacity(ies) Claimed by Signer(s)**

Signer's Name: _____

 Corporate Officer — Title(s): _____ Partner — Limited General Individual Attorney in Fact Trustee Guardian or Conservator Other: _____

Signer Is Representing: _____

Signer's Name: _____

 Corporate Officer — Title(s): _____ Partner — Limited General Individual Attorney in Fact Trustee Guardian or Conservator Other: _____

Signer Is Representing: _____

Exhibit A

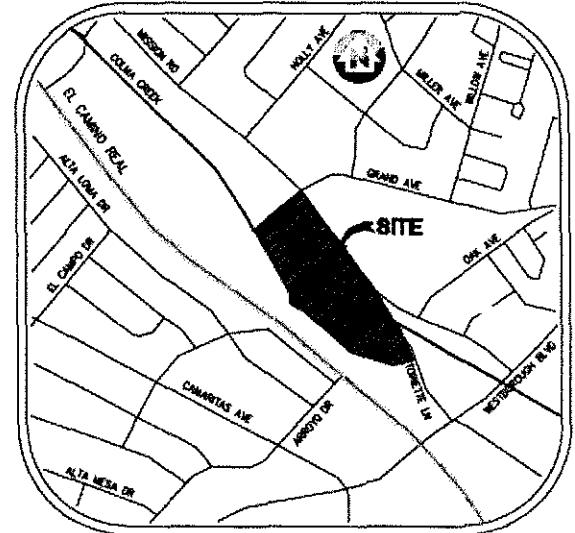
Description and Diagram of Project Site



SCALE
0 30 60 90 120 150
1 inch = 150 feet

LEGEND

- SITE C2 (64,408 SF)
- SITE C1 (149,295 SF)
- SITE B (73,985 SF)
- OAK AVENUE PHASE 1 EXTENSION ROW (16,722 SF)
- BART OPEN SPACE PROPERTY (33,981 SF)
- BART ROW PROPERTY (7,296 SF)
- CITY OPEN SPACE PROPERTIES (2) (8,550 SF AND 3,286 SF)
- CITY ROW PROPERTY (14,270 SF)
- KAISER ROW PROPERTY (14,340 SF)
- CIVIC PARCEL (33,481 SF)



VICINITY MAP
N.T.S.

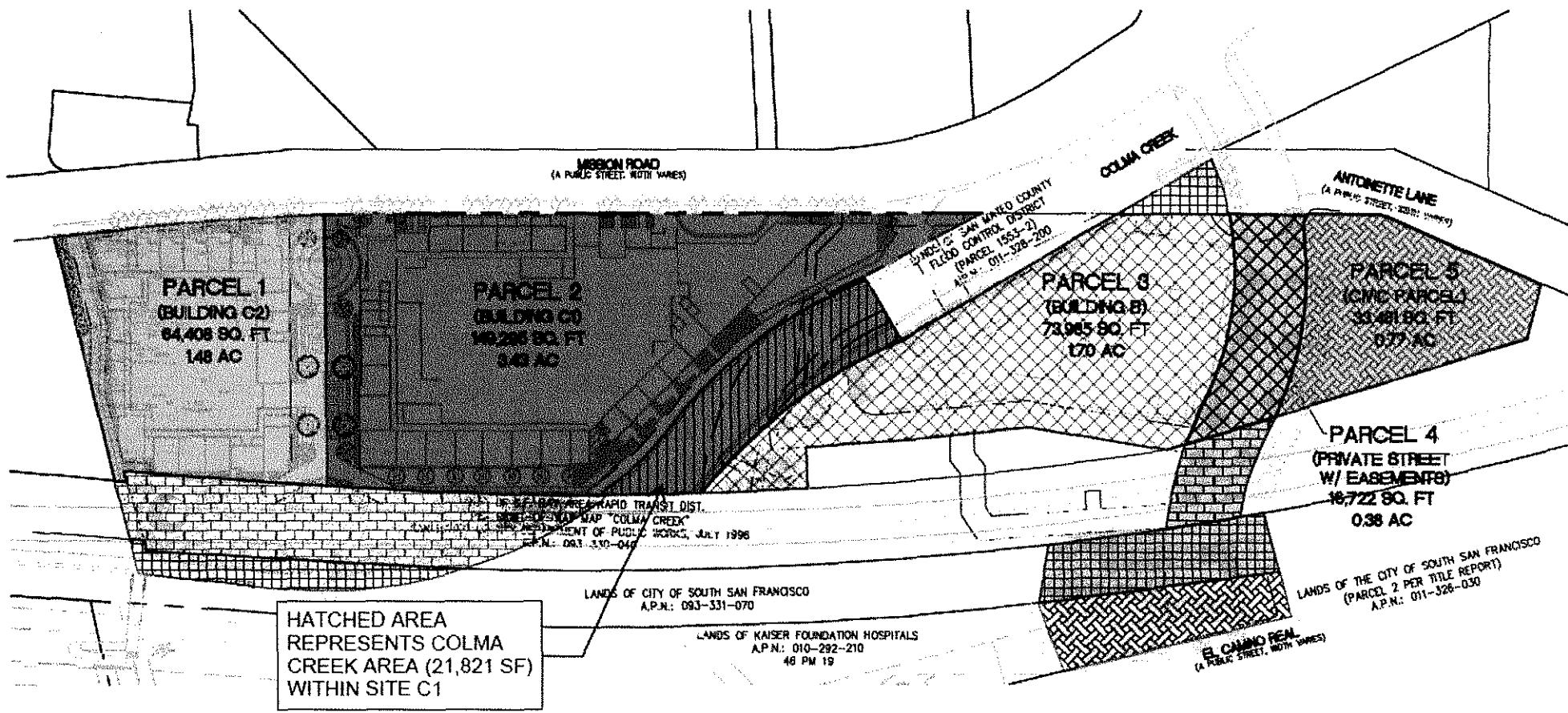


Exhibit B

List of Project Approvals

- Environmental Consistency Analysis for the El Camino Real/Chestnut Area Plan Environmental Impact Report and Community Civic Campus Plan Supplemental Environmental Impact Report approved by the City Council on November 13, 2019 by Resolution No. 151-2019.
- Conditional Use Permit (UP19-0008) for conditional uses and incentive bonuses and parking determination approved by the City Council on November 13, 2019 by Resolution No. 152-2019.
- Design Review (DR19-0028) approved by the City Council on November 13, 2019 by Resolution No. 152-2019.
- Vesting Tentative Tract Map (SA19-0001) approved by the City Council on November 13, 2019 by Resolution No. 152-2019.
- Build-To Line Waiver along Mission Road (WM19-0002) approved by the City Council on November 13, 2019 by Resolution No. 152-2019.
- Active Frontage Chief Planner Waiver for 50% Active Use along Mission Road (WM19-0002) approved by the City Council on November 13, 2019 by Resolution No. 152-2019.
- Ground Floor Entrance Chief Planner Alternative Design Approval for Buildings C1 and C2 facing BART right of way and Colma Creek (WM19-0002) approved by the City Council on November 13, 2019 by Resolution No. 152-2019.
- State Density Bonus Law for (1) 25% bonus on Parcel B from General Plan and Area Plan density per Government Code Section 65915(f)(1) and (2) development standard waiver from rear yard setback requirements set forth in 20.270.004(D)(1-4) for Buildings Parcels B, C1 and C2 fronting BART and Colma Creek per Government Code Section 65915(e) (DB19-0003) approved by the City Council on November 13, 2019 by Resolution No. 152-2019.
- Purchase and Sale Agreement approved by the City Council on November 13, 2019 by Resolution No. 153-2019 and the San Mateo Countywide Oversight Board by Resolution No. 2020-09 on February 10, 2020.
- This Development Agreement (DA19-0002) introduced on November 13, 2019 and approved by the City Council on December 11, 2019 by Ordinance No. 19-960.

Exhibit C

Applicable Laws & City Fees, Exactions, and Payments

CURRENT SOUTH SAN FRANCISCO LAWS

Developer shall comply with the following City regulations and provisions applicable to the Property as of the Effective Date (except as modified by this Agreement and the Project Approvals).

- 1.1 South San Francisco General Plan. The Developer will develop the Project in a manner consistent with the objectives, policies, general land uses and programs specified in the South San Francisco General Plan, as adopted on October 13, 1999 and as amended from time to time prior to the Effective Date of this Agreement.
- 1.2 El Camino Real/Chestnut Area Plan. The Developer will develop the Project in a manner consistent with the objectives, policies, general land uses and programs specified in the El Camino Real/Chestnut Area Plan, as adopted and as amended from time to time prior to the Effective Date of this Agreement.
- 1.3 El Camino Real Mixed Use North, High Intensity High Density Residential and El Camino Real/Chestnut Area Plan – Residential High Zoning District. The Developer shall construct the Project in a manner consistent with the zoning districts applicable to the Project as of the Effective Date and as amended from time to time prior to the Effective Date of this Agreement.
- 1.4 South San Francisco Municipal Code. The Developer shall construct the Project in a manner consistent with the South San Francisco Municipal Code provisions, as applicable to the Project as of the Effective Date (except as modified by this Agreement, and as may be amended from time to time consistent with this Agreement).

FEES, EXACTIONS, & PAYMENTS

Subject to the terms of Section 5.6(b) of this Agreement, Developer agrees that Developer shall be responsible for the payment of the following fees, charges, exactions, taxes, and assessments (collectively, “**Assessments**”). From time to time, the City may update, revise, or change its Assessments. Further, nothing herein shall be construed to relieve the Property from common benefit assessments levied against it and similarly situated properties by the City pursuant to and in accordance with any statutory procedure for the assessment of property to pay for infrastructure and/or services that benefit the Property. As authorized by the applicable Development Fee enabling ordinance or resolution as of the Effective Date of this Agreement, the amount paid for a particular Assessment, shall be the amount owed, based on the calculation or formula in place at the time payment is due, as specified below.

- 2.1 Administrative/Processing Fees. The Developer shall pay the applicable application, processing, administrative, legal and inspection fees and charges, as currently adopted pursuant to City’s Master Fee Schedule and required by the City for processing of land

use entitlements, including without limitation, General Plan amendments, zoning changes, precise plans, development agreements, conditional use permits, variances, transportation demand management plans, tentative subdivision maps, parcel maps, lot line adjustments, general plan maintenance fee, demolition permits, and building permits.

2.2. Impact Fees (Existing Fees). Except as modified below and as set forth in Section 3.2(b) of this Agreement, only the following existing impact fees shall be paid for net new square footage (and excluding or reducing such fees for the Affordable Units as provided for in such fee ordinances) at the later of (i) issuance of temporary certificate of occupancy or (ii) the times prescribed in the resolution(s) or ordinance(s) adopting and implementing the fees.

- (a) Child Care Impact Fee. (SSFMC Chapter 20.310; Ordinance 1432-2001). The on-site child-care facility fully satisfies the City's Childeare Impact Fee for the Project (no monetary amounts shall be charged provided that the Childcare Center is constructed).
- (b) Public Safety Impact Fee. (Resolution 97-2012) The Developer shall pay the Public Safety Impact Fee, as set forth in Resolution No. 97-2012, adopted on December 10, 2012, to assist the City's Fire Department and Police Department with funding the acquisition and maintenance of Police and Fire Department vehicles, apparatus, equipment, and similar needs for the provision of public safety services.
- (c) Sewer Capacity Charge. (Resolution 39-2010) The Developer shall pay the Sewer Capacity Charge, as set forth in Resolution No. 39-2010.
- (d) General Plan Maintenance Fee. (Resolution 74-2007). The Developer shall pay the General Plan Maintenance Fee as set forth in Resolution 74-2007.
- (e) Affordable Housing Inclusionary Housing and In Lieu Fees (SSFMC Chapter 20.380) and Affordable Housing Commercial Linkage Fee (SSFMC Chapter 8.69). The Affordable Units fully satisfy the Affordable Housing Inclusionary Housing and In Lieu Fee, and Affordable Housing Commercial Linkage Fee, for the Project (no monetary amounts shall be charged).
- (f) Park and Recreation Fees. The Developer shall pay the Park and Recreation Fees per SSFMC Chapter 8.67.
- (g) Bicycle and Pedestrian Impact Fee. The Developer shall pay the Bicycle and Pedestrian Impact Fee per SSFMC Chapter 8.68.

2.3 User Fees.

(a) Sewer Service Charges. (payable at the then applicable rate as of the date of imposition of the Sewer Service Charge and assessed as part of property tax bill)

(b) Storm water Charges. (payable at the then applicable rate as of the date of imposition of the Storm water Charge and assessed as part of property tax bill)

2.4 School Impact Fees. Developer shall pay to the school the applicable school fees in the rates and at the time required by applicable law.

2.5 Public Benefits and Commitments. As set forth in Article 3.

2.5 Sales Tax/Business License Tax Modifications. In the event that the City's business license tax or locally imposed sales tax are modified and duly approved by voters, and any subsequent tax modifications become applicable to the properties on the Project during the term of this Agreement, Developer shall be responsible to pay the applicable business license and sales tax amounts, as modified.

Exhibit D

[Form of] Affordable Housing Agreement (BRIDGE)

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: City Manager

**EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383**

Space above this line for Recorder's use.

[FORM OF]

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

Parcel 1, Building C2, South San Francisco

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

BRIDGE HOUSING CORPORATION

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 20____ (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) and BRIDGE Housing Corporation, a California nonprofit public benefit corporation (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Owner owns that certain real property located in the City of South San Francisco referred to a “Site C2”, located at 1051 Mission Road, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Under the Development Agreement executed by and between SSF PUC Housing Partners, LLC and the City dated as of _____ (the “**Development Agreement**”), as partially assigned to Owner, the Property is required to be used for one hundred fifty-eight (158) units of affordable housing and ancillary improvements (the “**Project**”).

C. Pursuant to Government Code Section 65915 and South San Francisco Municipal Code Chapter 20.390, Owner has agreed that the Project will result in 55 units being available to residents with incomes at or below of fifty (50) percent of area median income. Furthermore, Developer has requested a density bonus of twenty five (25) percent and has, pursuant to Section 20.390.010.B.7, requested development standard waivers including a FAR increase above the maximum FAR for that site designated as “Site B” in the Development Agreement, and a waiver of setback requirements under South San Francisco Municipal Code Section 20.270.004(D) for the Property and for “Site C1” and “Site B,” as designated in the Development Agreement. In addition, City, through its Commercial Linkage Fee fund, will provide \$2,000,000 of financial assistance to Owner as referenced in the Loan Agreement attached hereto as Exhibit B.

D. As required by the Development Agreement, Owner shall record this Agreement against the Property. The execution of this Agreement shall take place prior to final map approval and shall be recorded upon final map recordation or, where a map is not being processed, prior to the issuance of building permits for the Project.. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner’s successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

AGREEMENT

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

“**Actual Household Size**” means the actual number of persons in the applicable household.

"Adjusted for Family Size Appropriate for the Unit" shall be determined as defined below, and for units of any other size consistent with applicable federal rules (if any) and Section 50052.5(h) of the California Health and Safety Code, as it exists or may be amended:

One Bedroom – 1.5 people

Two Bedroom – 3 people

Three Bedroom – 4.5 people

"Adjusted Income" means, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by HUD or TCAC.

"Affordable Rent" means rents allowed by TCAC for the Unit's designated income level. If TCAC does not publish such rents, it means the following amounts, less a utility allowance and such other adjustments as required pursuant to the California Law: (i) for Units occupied by Extremely Low Income Households, a monthly rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of AMI, Adjusted for Family Size Appropriate for the Unit; (ii) for Units occupied by Very Low Income Households, a monthly rent that does not exceed one-twelfth (1/12) of fifty percent (50%) of AMI, Adjusted for Family Size Appropriate for the Unit; and (iii) for Units occupied by Lower Income Households, a monthly rent that does not exceed one-twelfth (1/12) of eighty percent (80%) of AMI, Adjusted for Family Size Appropriate for the Unit. "

Area Median Income or **"AMI"** means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by TCAC if the Project is restricted by a tax credit regulatory agreement, or by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the HCD in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c). In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, the City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

"Assignment and Assumption Agreement" is defined as the Assignment and Assumption Agreement between the City of South San Francisco and BRIDGE Housing dated _____ and included as Exhibit F to the Development Agreement.

"Claims" is defined in Section 10.

"Developer" is defined in the Development Agreement.

"Extremely Low Income Household" means persons and families whose incomes do not exceed an annual gross household income for households of 30% Income Level as published by TCAC, adjusted for Actual Household Size, or if TCAC does not publish such levels, it shall have the meaning set forth in South San Francisco Municipal Code Section 20.390.002.P.

"Indemnitees" is defined in Section 10.

"Lower Income Household" persons and families whose incomes do not exceed an annual gross household income for households of 80% Income Level as published by TCAC, adjusted for Actual Household Size, or if TCAC does not publish such levels, it shall have the meaning set forth in South San Francisco Municipal Code Section 20.390.002.H.

"Rent" shall mean the total of monthly payments by the residents of a Unit (other than the manager's Unit) for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner which are required of all residents, other than security deposits; the cost of an adequate level of service for utilities paid by the Resident, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Resident.

"Resident" shall mean an individual or household occupying a Unit.

"TCAC" shall mean the California Tax Credit Allocation Committee.

"Units" shall mean the individual dwelling units to be constructed on the Property as part of the Project.

"Very Low Income Household" means persons and families whose incomes do not exceed an annual gross household income for households of 50% Income Level as published by TCAC, adjusted for Actual Household Size, or if TCAC does not publish such levels, it shall have the meaning set forth in South San Francisco Municipal Code Section 20.390.002.P.

2. **Use and Affordability Restrictions.** Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property and Project shall be used solely for the operation of affordable rental housing and related improvements in compliance with the Development Agreement and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 **Affordability Requirements.** For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, fifty-five (55) of the Units in the Project shall be rented at an Affordable Rent to and occupied by or, if vacant, available for occupancy by Very Low Income Households at Very Low Income Rents. The remaining Units within the Project, exclusive of a manager's Unit, shall be rented at an Affordable Rent to and occupied by or, if vacant, available for occupancy by households whose incomes range between Extremely Low Income Households and Lower Income Households. The average affordable restriction by of all of the Units, exclusive of a manager's Unit, shall be sixty percent (60%) of AMI.

2.2 **Rents for Very Low Income Units.** The Rent charged to Residents of the Very

Low Income Units shall not exceed the rents allowed by TCAC for the Unit's designated income level (the " **Low Income Rents**"). If TCAC does not publish such rents, the monthly Very Low Income Rents shall be 1/12th of 30% of the Unit's designated income level.

2.3 Increased Income of Residents. If, upon recertification of the income of a Resident of a Unit, the Owner determines that the Resident has an Adjusted Income exceeding the maximum qualifying income for the Unit, such Resident shall be permitted to continue occupying the Unit upon expiration of the Resident's lease, and upon sixty (60) days written notice, the Rent shall be increased to the lesser of thirty percent (30%) of the Resident's Adjusted Income or fair market value, subject to the maximum rent allowed pursuant to other funding restrictions.

2.4 Termination of Occupancy. Upon termination of occupancy of a Unit by a Resident, Owner shall rent the Unit, to a Resident whose income is at or below the income level of the former Resident when they qualified for occupancy of such Unit within thirty (30) days of termination of occupancy by the former Resident

2.5 Condominium Conversion. Owner shall not convert the Units in the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential portion of the Project or any part thereof unless Owner obtains the City's consent, which consent shall be conditioned upon Owner's agreement to ensure that the Units remain available as affordable housing. Prior to conveyance of any Unit(s), the buyer(s) of the for-sale Units shall enter into an affordable housing agreement, in a form approved by the City Manager and City Attorney, that maintains the affordability of the unit for the minimum term set forth in this Agreement or in California law whichever is greater.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Preferences. In order to ensure that there is an adequate supply of affordable housing within the City for City residents and employees of businesses located within the City, to the extent permitted by fair housing laws and other applicable laws, and consistent with the program regulations for funding sources used for development of the Project, at initial lease up, Owner shall give a preference in the Project to households that include at least one member who lives or works in the City of South San Francisco. Owner will implement any preferences in the rental of Units in the Project pursuant to a preference plan approved by its lenders, investors and the City Manager. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 shall control.

2.6.2 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the Units. Owner shall accept as Residents, on the same basis as all other prospective households, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or Project, or any portion thereof, on the basis of race, color, religion, sex, gender, gender identity, gender expression,

sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, Project or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees in, of, or for the Property, Project or part thereof.

All deeds made or entered into by Owner, its successors or assigns, as to any portion of the Property or Project shall contain the following language, and all leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Property or Project, shall reference this Section, and shall enforce the same diligently and in good faith:

“(a) Owner herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

“(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (d) of Section 12955 of the Government Code shall apply to paragraph (a).”

3. Reporting Requirements.

3.1. Household Certification. Owner or Owner’s authorized agent shall obtain from each household prior to initial occupancy of each Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

- (a) The identity of each household member; and
- (b) The total gross household income;

Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall make the certificates available for City inspection.

3.2 Annual Report; Inspections. By not later than April 30th of each year during the term of this Agreement, Owner shall submit an annual report ("Annual Report") to the City in form satisfactory to City, together with a certification that the Project is in compliance with the requirements of this Agreement (as of December 31 of the prior year). The Annual Report shall, at a minimum, include the following information for each Unit: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying Very Low Income Household eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Project is subject to a TCAC regulatory agreement, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required by TCAC.

3.3 On-site Inspection. Owner shall permit representatives of City to enter and inspect the Property and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 48-hours advance notice of such visit to Owner or to Owner's management agent.

3.4 Additional Information. Owner shall provide any additional information reasonably requested by City. The City shall have the right to audit, examine and make copies of all books, records, or other documents of the Owner which pertain to the Project.

3.5 Records. The Owner shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of the Residents. All Resident lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least three (3) years, and for any period during which there is an audit undertaken by the City.

4. Term of Agreement.

4.1 Term of Restrictions. Unless extended by mutual agreement of the Parties, upon the 55th anniversary of issuance of the final certificate of occupancy for the Project, this Agreement shall automatically terminate and be of no further force or effect. The Owner shall provide all notices and rights to tenants required to be given prior to and upon the expiration of affordability covenants pursuant to Government Code Section 65863.10 or a successor statute.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, regardless of any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein.

4.3 Reconveyance. Upon the expiration of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to evidence the expiration of this Agreement, or to evidence the release and discharge of this Agreement as a matter of title.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The Parties hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Parties, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner, or Owner's designee, shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of Very Low Income Households and Residents, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Project.

6.2 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner, or Owner's designee, shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the Units, common areas, meeting rooms,

landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair and abandoned vehicles/appliances, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project.

6.2.1 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.2, and such default continues for a period of thirty (30) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property.

6.2.2 Costs. All costs expended by City in connection with the foregoing Section 6.2.1, shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 8% per annum or the highest rate permitted by applicable law. Notwithstanding anything to the contrary set forth in this Section, City agrees that it will provide Owner with not less than thirty (30) days' written notice prior to undertaking any work for which Owner will incur a financial obligation.

6.3 Marketing and Management Plan. Within 180 days following the Effective Date of this Agreement, Owner shall submit for City review and approval, a plan for marketing and managing the Property ("Marketing and Management Plan" or "Plan"). The Marketing and Management Plan shall address in detail how Owner plans to market the Units to prospective Extremely Low, Very Low and Lower Income Households in accordance with fair housing laws and this Agreement, Owner's Resident selection criteria, and how Owner plans to certify the eligibility of Residents. The Plan will also set forth the manner in which Owner will encourage or incentivize (including financial incentives, to the extent allowed by TCAC regulations) Residents who no longer qualify as Lower Income Households to transition to market rate housing opportunities within the City. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Residents. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement.

6.4 Approval of Amendments. If City has not responded to any submission of the Marketing and Management Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

6.5 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such

charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section is intended to prohibit Owner from applying for any exemption from property taxes and fees that may be available to the owners of low-income housing.

6.6 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit B.

6.7 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of San Mateo County concurrently with Owner's acquisition of the Property. Notwithstanding the foregoing, the City agrees the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders providing financing for the acquisition, development or rehabilitation of the Project (and their successors and assigns), provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a subordination under this Agreement within ten (10) days following City's delivery of an invoice detailing such costs.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. Upon issuance of a final certificate of occupancy for the Project, or any portion thereof, Owner may, upon approval by the City which approval shall not be unreasonably withheld, transfer or assign all or any portion of its interests, rights or obligations in the Property, or under this Agreement, to any third party, and, as this Agreement "runs with the land" this Agreement shall be binding on Owner's successors and assigns for the full term of this Agreement.

Prior to issuance of a final certificate of occupancy for the Project, or any portion thereof, Owner may transfer or assign all or any portion of its interest, right or obligations in the Property to an affiliate of Owner, as set forth in the Development Agreement.

Consent to any proposed transfer may be given by the City's City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City's governing board. If a proposed transfer has not been approved by City in writing within thirty (30) days following City's receipt of written request by Owner, it shall be deemed rejected.

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery of an invoice detailing such costs.

The Parties contemplate that Owner will assign its rights under this Agreement or its interests, rights, or obligations in the Property or under this Agreement, to a tax credit limited partnership that is an affiliate of Owner. Notwithstanding anything to the contrary herein, a transfer by the investor limited partner of its limited partner interest in the affiliate, or the exercise by the investor limited partner of its remedies against Owner for breach of the partnership agreement, including removal of Owner as a general partner, shall not constitute an assignment of Owner's interests, rights, or obligations in the Property or under this Agreement that would require City approval.

8.2 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender ("Lender") shall contain each of the following provisions: (i) Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; and, (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional 90 days. Owner agrees to provide to City a copy of any notice of default Owner receives from any Lender within thirty (30) business days following Owner's receipt thereof.

8.3 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("Event of Default"):

- (a) The occurrence of a transfer in violation of Section 8.1 hereof;

(b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within thirty (30) days of written notice from City;

(c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within sixty (60) days of delinquency;

(d) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(e) Owner's default in the performance of any material term, provision or covenant under this Agreement (other than an obligation enumerated in this Subsection 9.1 or the Assignment and Assumption Agreement as defined in Section 1, and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 60 days, Owner's failure to commence to cure the default within sixty (60) days and thereafter prosecute the curing of such default with due diligence and in good faith.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

- A. Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- B. Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the fullest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold City and its respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under

this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Owner that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

If to City, to: City of South San Francisco
 400 Grand Avenue
 Attn: City Manager
 South San Francisco, CA 94080
 Phone: (650) 877-8500
 Email: mike.futrell@ssf.net

With a Copy to: City of South San Francisco
400 Grand Avenue
Attn: ECD Director
South San Francisco, CA 94080
Phone: (650) 829-6622
Email: alex.greenwood@ssf.net

With a Copy to: Meyers Nave
Attn: Sky Woodruff, City Attorney
555 12th Street, Suite 1500
Oakland, CA 94607
Tel (510) 808-2000
Fax (510) 444-1108
Email swoodruff@meyersnave.com

If to Owner: [Insert]

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the City at the discretion of the City Manager.

11.7 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to

interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement contains the entire agreement of Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibit A and Exhibit B, attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY

THE CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____

Name: Mike Futrell

Title: City Manager

ATTEST:

By: _____
Rosa Govea Acosta, City Clerk

APPROVED AS TO FORM:

By: _____
Sky Woodruff, City Attorney

OWNER

By: _____

Its: _____

SIGNATURES **MUST** **BE** **NOTARIZED.**

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 MATEO)

On _____, 20_____, before me, _____, (here insert name and title of the officer), 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 _____ (Seal)

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 MATEO)

On _____, 20_____, before me, _____, (here insert name and title of the officer), 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 _____ (Seal)

Exhibit A
[Insert Property Legal Description]

3426169.1

Exhibit E

[Form of] Site C2 (BRIDGE) Assignment and Assumption Agreement

**ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT
AND PURCHASE AND SALE AGREEMENT BY AND BETWEEN
SSF PUC HOUSING PARTNERS, LLC AND BRIDGE HOUSING CORPORATION**

This Assignment and Assumption of Development Agreement and Purchase and Sale Agreement (this "Agreement") is entered into as of _____, 20__ (the "Execution Date"), by and between SSF PUC Housing Partners, LLC, a Delaware limited liability company ("Assignor"), and BRIDGE Housing Corporation, a California nonprofit public benefit corporation ("Assignee"), collectively referred to herein as the "Parties," with reference to the following facts:

RECITALS

- A. Assignor has acquired, pursuant to that certain Purchase and Sale Agreement dated _____, 2020 (the "PSA") with the City of South San Francisco, a municipal corporation (the "City"), a legal and or equitable interest in that certain real property described in Exhibit A-1 to this Agreement (the "Property").
- B. Assignor intends to develop the Property pursuant to a Development Agreement with the City recorded as document number _____ in the official records of San Mateo County (the "DA") with a project (the "Project") described more particularly in the DA, and generally including 800 residential units, an approximately 8,307 square foot childcare center (the "Childcare Center"), an approximately 12,992 square foot commercial building (the "Market Hall"), landscaping and Park Improvements, and other improvements and Public Infrastructure. The DA also obligates Assignor to construct certain Offsite Improvements and to pay certain Impact Fees.
- C. Of the 800 residential units to be constructed in the Project, 158 are designated in the DA as below market rate units affordable to households with incomes at or below 80 percent (80%) of area median income, exclusive of the manager's unit ("Affordable Units"). The 158 Affordable Units shall be affordable to residents with incomes in the range of 30 to 80% AMI with an overall average for all units at 60% AMI. Construction of these Affordable Units is a material obligation of the Developer under the PSA and DA, and certain benefits under Government Code Section 65915 will inure to the Project because of the Affordable Units. The DA contemplates construction of a building identified as "Building C2" to house the Affordable Units, which will be constructed on a portion of the Project designated in the vesting tentative tract map for the project as "Parcel 1" and described more particularly in Exhibit A-2 to this Agreement.
- D. Assignor desires to assign Parcel 1 and its obligation to construct Building C2 to Assignee, and Assignee desires to accept the assignment of the same. The purpose of this Agreement is to memorialize said assignment and assumption of rights and obligations, to evidence site control of Parcel 1 by Assignee, and to delineate the Parties' respective obligations for development of the Project.

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

ARTICLE 1. RECITALS,
DEFINITIONS, AND EXHIBITS

Section 1.1 Recitals.

The Parties hereby agree that each of the foregoing recitals is true and correct.

Section 1.2 Definitions.

The capitalized terms below shall have the following meanings:

- (a) "Affiliate" shall mean, (i) a limited partnership in which Assignee is the managing general partner, formed for the purpose of leveraging tax credit financing for the development of Building C2; (ii) a limited liability company in which Assignee is the sole member, formed to be the managing general partner of such a tax credit limited partnership; or (iii) a tax credit limited partnership whose managing general partner is a limited liability company described in the previous clause or a corporation controlled by Assignee.
- (b) "Affordable Units" is defined in Recital C.
- (c) "Agreement" is defined in the opening paragraph.
- (d) "Assignee" is defined in the opening paragraph.
- (e) "Assignor" is defined in the opening paragraph.
- (f) "Assignee Obligations" is defined in Section 4.1.
- (g) "Assignor Obligations" is defined in Section 4.2.
- (h) "Building C2" is defined in Recital C.
- (i) "Childcare Center" is defined in Recital B.
- (j) "City" is defined in Recital A.
- (k) "Closing" shall have the meaning given in the PSA.
- (l) "Conditions of Approval" shall mean requirements imposed by the City as a condition of any land use entitlement necessary for the development of the Project.
- (m) "Consent" means the consent agreement to be executed by the City, attached hereto as Exhibit B.
- (n) "DA" is defined in Recital B.
- (o) "Developer" shall have the meaning given by the DA.
- (p) "Effective Date" is defined in Section 5.6.

- (q) "Execution Date" is defined in the opening paragraph.
- (r) "Environmental Mitigation Measures" shall mean Conditions of Approval imposed upon the Project pursuant to the California Environmental Quality Act, as identified in an adopted Mitigation Monitoring and Reporting Program applicable to the Project.
- (s) "Impact Fees" shall mean a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees for processing applications for governmental regulatory actions or approvals.
- (t) "Market Hall" is defined in Recital B.
- (u) "Oak Avenue Extensions" means, collectively, the Oak Avenue Phase 1 Extension and Oak Avenue Phase 2 Extension, as defined in the DA and PSA.
- (v) "Offsite Improvements" shall mean Public Infrastructure, excluding Public Infrastructure to be constructed on the Property.
- (w) "PALE" shall mean the approximately 33,981 square feet of land designated in the vesting tentative tract map for the Project as the Public Access and Landscape Easement on BART Property, together with approximately 8,529 square feet of land owned by the City adjacent thereto, to be subject to an Encroachment and Maintenance Agreement.
- (x) "Parcel 1" is defined in Recital C.
- (y) "Parties" are defined in the opening paragraph.
- (z) "Park Improvements" means the landscaping, playground equipment, bioretention basins, emergency vehicle access, sidewalks, and other improvements proposed in the entitlement application for the Project to be constructed on the PALE.
- (aa) "Paseo" means the paseo to be constructed between the Project's residential buildings and along the southeastern edge of Parcel 1 and northwestern edge of Parcel 2, as depicted on the vesting tentative tract map for the Project. "Paseo" also includes an initial asphalt driveway that will be constructed in the location of the Paseo for emergency vehicle access prior to full build-out of the Paseo improvements.
- (bb) "Project" is defined in Recital B.
- (cc) "Property" is defined in Recital A.
- (dd) "PSA" is defined in Recital A.

(ee) "Public Infrastructure" shall mean infrastructure and other improvements constructed for use by, or for the benefit of, the general public, including, without limitation, utilities, sidewalks, roads, other rights of way, and Park Improvements.

Section 1.3 Exhibits.

The following exhibits are attached to this Agreement, and are incorporated herein by this reference:

Exhibit A-1: Legal Description of the Property

Exhibit A-2: Legal Description of Parcel 1

Exhibit B: City's Consent

Exhibit C: Depiction of Portions of PALE to be Developed by each Party

ARTICLE 2. ASSIGNMENT
AND ASSUMPTION OF PSA

Section 2.1 Assignment and Assumption.

Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, Assignor's rights, title, and interest under the PSA to acquire Parcel 1 from the City for the purpose of developing, constructing, owning, and operating Building C2.

Section 2.2 Consideration.

At Closing, Assignee shall pay the City the Parcel 1 Purchase Price to acquire Parcel 1. The "Parcel 1 Purchase Price" is the lesser of \$2,200,000 or 20% of the Purchase Price paid under the PSA. If Assignee pays the City the Parcel 1 Purchase Price to acquire Parcel 1, Assignor agrees to repay Assignee the amount of the Parcel 1 Purchase Price, which obligation shall be secured by recording a deed of trust or other security instrument, to be approved as to form by the City Manager and City Attorney, in first lien position against the remainder of the Property (i.e., that part of the Property not including Parcel 1) at the time of Close of Escrow between Assignor and the City. Notwithstanding the forgoing if Assignor acquires the remainder of the Property (or a portion thereof), before Assignee acquires Parcel 1, then Assignor will pay to the City the Parcel 1 Purchase Price for the benefit of Assignee and Assignee shall pay the City \$1 to acquire Parcel 1.

Section 2.3 Consent and Release by City (PSA).

The City's consent and release to this partial assignment and assumption of the PSA is set forth in the Consent. Parties hereby mutually acknowledge and agree to every provision of the Consent.

ARTICLE 3. ASSIGNMENT AND ASSUMPTION OF DA

Section 3.1 Assignment by Assignor.

Assignor hereby assigns and delegates to Assignee the rights, title, duties, and interest of the Developer under the DA with respect to the development of Parcel 1 and the construction of Building C2.

Section 3.2 Assumption by Assignee.

Assignee hereby accepts and assumes from Assignor, Assignor's rights, title, duties, and interest under the DA, as assigned under Section 3.1; provided, however, that Assignee's obligations under the DA are expressly limited to the Assignee Obligations, as set forth in Article 4.

Section 3.3 Consent and Release by City (DA).

The City's consent and release to this partial assignment and assumption of the DA is set forth in the Consent. Parties hereby mutually acknowledge and agree to every provision of the Consent.

ARTICLE 4. OBLIGATIONS OF THE PARTIES

Section 4.1 Assignee Obligations.

(a) Assignee's obligations to develop the Project, perform Environmental Mitigation Measures and other Conditions of Approval, construct Offsite Improvements and other Public Infrastructure, and pay Impact Fees (the "Assignee Obligations"), shall consist of and be limited to the following obligations:

- (1) To develop Building C2 to operate as an affordable housing project as set forth in the DA;
- (2) To construct that portion of the Paseo located on Parcel 1;
- (3) To construct those Park Improvements planned to be located on the portion of the PALE depicted on Exhibit C attached hereto, which is adjacent and to the southwest of Parcel 1;
- (4) To construct any Public Infrastructure to be located on Parcel 1 and any Offsite Improvements required to be constructed by the Developer along that portion of the Mission Road right of way fronting onto Parcel 1;
- (5) To construct a bicycle connection north of Building C2;
- (6) Generally, to perform and comply with all Environmental Mitigation Measures and other Conditions of Approval that relate directly to the performance of the

foregoing obligations, including, in the performance of the Assignee Obligations, (i) compliance with the City's climate action plan; (ii) compliance with any transportation demand management or parking management plan for the Project; and (iii) compliance with any water quality control, flood control, engineering, or public safety conditions of approval; compliance with federal and state law, including but not limited to compliance with prevailing wage requirements and any obligation to obtain government approvals, with respect to Parcel 1 and Building C2; construction or undergrounding of any utility, but only directly serving Building C2 or located on Parcel 1 (subject to Government Code Section 66485, et seq.);

(7) To pay Impact Fees due and owing to the City pursuant to the DA for the 158 residential units to be constructed on Parcel 1, which are estimated as follows but will be finally determined at the time such Impact Fees are paid consistent with the provisions in the DA:

- (A) Sewer capacity fee: \$533,008,
- (B) Park impact fees: \$2,374,108,
- (C) Bike and pedestrian fees: \$20,066,
- (D) Public safety impact fee (police): \$26,686, and
- (E) Public safety impact fee (fire): \$62,268;

(8) To pay any other Impact Fees due and owing to any public agency other than the City for Parcel 1 or Building C2, whether calculated in proportion to the number of units in Building C2, the size of Parcel 1, or other measure that accounts for Assignee's proportional share of the fee; and

(9) To pay expedited plan check fees, but only if Assignee requests an expedited plan check.

(b) For greater clarity, and without limiting the generality of Subsection (a), Assignee shall not be responsible for, and the Assignee Obligations shall not include any obligations or requirements that do not directly relate to the development and operation of Parcel 1 and Building C2 or satisfaction of the obligations listed in Section 4.1(a). For non-exhaustive examples only:

(1) The performance of or compliance with any Environmental Mitigation Measure or Condition of Approval not directly relating to the development of Parcel 1 and Building C2 and the performance of the Assignee Obligations as defined in Section 4.1, including;

(2) The performance of any Environmental Mitigation Measure requiring construction of transportation Offsite Improvements, except any such improvements within the Mission Road right of way fronting Parcel 1 as provided in Section 4.1(a)(4), or requiring Assignee to fund more than its proportionate share of the cost of any such improvement;

(3) The construction of any improvement not described in Subsection (a), including, without limitation, (i) construction or undergrounding of any utility not on or serving Parcel 1 or Building C2; (ii) satisfaction of the Developer's public art commitment; or (iii) the construction of the Childcare Center, Market Hall, Oak Avenue Extensions, or other Project improvements or Off-Site Improvements to be located on any parcel other than Parcel 1, unless expressly identified in Subsection (a);

(4) The payment of any Impact Fee not described in Subsection (a); and

(5) Compliance with federal and state law, including but not limited to compliance with prevailing wage requirements and any obligation to obtain government approvals, except with respect to Parcel 1 and Building C2.

Section 4.2 Assignor Obligations.

Assignor shall be responsible for all obligations of the Developer, except for the Assignee Obligations, to develop the Project, perform and comply with Environmental Mitigation Measures and other Conditions of Approval, construct Offsite Improvements or other Public Infrastructure, and pay any and all Impact Fees associated with the Project (the "Assignor Obligations"). From and after the Effective Date, the Assignor shall not be responsible for the Assignee Obligations and Assignee shall not be responsible for performance of the Assignor Obligations.

ARTICLE 5. MISCELLANEOUS

Section 5.1 Further Assurances.

The Parties agree to take such further actions as may be necessary or advisable to effectuate, confirm, or document the assignment and assumption contemplated hereby.

Section 5.2 City Consent to Further Assignment.

To the extent applicable, this Agreement may not be assigned without the written consent of the City consistent with the assignment provisions of the DA and PSA.

Section 5.3 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding, or unenforceability.

Section 5.4 Interpretation.

This Agreement shall be governed and interpreted in accordance with the laws of the state of California. This Agreement includes the contributions of both Parties, each of which is represented by competent counsel, and the rule stated in Civil Code Section 1654 that an agreement be construed against its drafter shall have no application hereto. Headings contained

in this Agreement are for convenience of reference only, and shall not alter the meaning of any provision hereof.

Section 5.5 Counterparts.

This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 5.6 Effective Date.

This Agreement shall be effective on the date fully executed by the Parties and the Consent has been duly executed by the City.

Section 5.7 Recordation.

Either this Agreement or a memorandum of this Agreement shall be recorded against the Property within ten (10) days of the Effective Date.

Section 5.8 Signatures.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Parties. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

[Signatures on the Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Execution Date.

ASSIGNOR:

SSF PUC Housing Partners, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

BRIDGE Housing Corporation,
a California nonprofit public benefit
corporation

By: _____
Name: _____
Title: _____

EXHIBIT A-1
PROPERTY LEGAL DESCRIPTION

EXHIBIT A-2
PARCEL 1 LEGAL DESCRIPTION

EXHIBIT B
CITY'S CONSENT AND RELEASE

The City hereby consents to the assignment and assumption set forth in this Agreement, and further agrees as follows:

1. Parcel 1 shall be conveyed to Assignee separately from the remainder of the Property to allow construction of Building C2 as contemplated under the PSA and DA, even if Assignor fails to Close on the remainder of the Property under the PSA, the City will convey Parcel 1 to Assignee or an Affiliate thereof at Closing in consideration of the lesser of \$2,200,000 or 20% of the Purchase Price paid under the PSA for all Property.
2. Assignee's obligations to the City under the PSA, DA, or other Project entitlements shall be limited to the Assignee Obligations, regardless of whether the Assignor Closes on the remainder of the Property or the remainder of the Project is constructed.
3. The City hereby affirms that construction of the Affordable Units, as a component of the Project, is a priority for the City. It is the intent of the City that Assignee have the ability to develop Building C2 independently from the market rate components of the Project and at the earliest possible opportunity. If warranted by changed circumstances, and at the City's discretion, the City will work with Assignee in good faith to refine and further delineate Assignee's obligations hereunder.
4. From and after the Execution Date of this Agreement, Assignor is fully released from the Assignee Obligations, Assignee is fully released from the Assignor Obligations, a default by the Assignor will not constitute a default by Assignee, and a default by Assignee will not constitute a default by Assignor. Notwithstanding anything to the contrary in this Agreement, the PSA, or the DA, the City may not exercise any remedy, whether contractual, regulatory, or otherwise, (i) with respect to Assignor because Assignee defaults under the Assignee Obligations, or (ii) with respect to Assignee because Assignor defaults under the Assignor Obligations. The limitations contained herein shall include the failure of the Assignor or Assignee to Close or to commence and complete construction within any specified time periods.

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____
Mike Futrell, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT C

DEPICTION OF PORTIONS OF PALE TO BE DEVELOPED BY EACH PARTY

3426080.1

EXHIBIT F

**FORM OF AFFORDABLE HOUSING (BRIDGE) ASSIGNMENT & ASSUMPTION
AGREEMENT**

**ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT
AND PURCHASE AND SALE AGREEMENT BY AND BETWEEN
SSF PUC HOUSING PARTNERS, LLC AND BRIDGE HOUSING CORPORATION**

This Assignment and Assumption of Development Agreement and Purchase and Sale Agreement (this "Agreement") is entered into as of _____, 20____ (the "Execution Date"), by and between SSF PUC Housing Partners, LLC, a Delaware limited liability company ("Assignor"), and BRIDGE Housing Corporation, a California nonprofit public benefit corporation ("Assignee"), collectively referred to herein as the "Parties," with reference to the following facts:

RECITALS

- A. Assignor has acquired, pursuant to that certain Purchase and Sale Agreement dated _____, 2020 (the "PSA") with the City of South San Francisco, a municipal corporation (the "City"), a legal and or equitable interest in that certain real property described in Exhibit A-1 to this Agreement (the "Property").
- B. Assignor intends to develop the Property pursuant to a Development Agreement with the City recorded as document number _____ in the official records of San Mateo County (the "DA") with a project (the "Project") described more particularly in the DA, and generally including 800 residential units, an approximately 8,307 square foot childcare center (the "Childcare Center"), an approximately 12,992 square foot commercial building (the "Market Hall"), landscaping and Park Improvements, and other improvements and Public Infrastructure. The DA also obligates Assignor to construct certain Offsite Improvements and to pay certain Impact Fees.
- C. Of the 800 residential units to be constructed in the Project, 158 are designated in the DA as below market rate units affordable to households with incomes at or below 80 percent (80%) of area median income, exclusive of the manager's unit ("Affordable Units"). The 158 Affordable Units shall be affordable to residents with incomes in the range of 30 to 80% AMI with an overall average for all units at 60% AMI. Construction of these Affordable Units is a material obligation of the Developer under the PSA and DA, and certain benefits under Government Code Section 65915 will inure to the Project because of the Affordable Units. The DA contemplates construction of a building identified as "Building C2" to house the Affordable Units, which will be constructed on a portion of the Project designated in the vesting tentative tract map for the project as "Parcel 1" and described more particularly in Exhibit A-2 to this Agreement.
- D. Assignor desires to assign Parcel 1 and its obligation to construct Building C2 to Assignee, and Assignee desires to accept the assignment of the same. The purpose of this Agreement is to memorialize said assignment and assumption of rights and obligations, to evidence site control of Parcel 1 by Assignee, and to delineate the Parties' respective obligations for development of the Project.

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

ARTICLE 1. RECITALS,
DEFINITIONS, AND EXHIBITS

Section 1.1 Recitals.

The Parties hereby agree that each of the foregoing recitals is true and correct.

Section 1.2 Definitions.

The capitalized terms below shall have the following meanings:

- (a) "Affiliate" shall mean, (i) a limited partnership in which Assignee is the managing general partner, formed for the purpose of leveraging tax credit financing for the development of Building C2; (ii) a limited liability company in which Assignee is the sole member, formed to be the managing general partner of such a tax credit limited partnership; or (iii) a tax credit limited partnership whose managing general partner is a limited liability company described in the previous clause or a corporation controlled by Assignee.
- (b) "Affordable Units" is defined in Recital C.
- (c) "Agreement" is defined in the opening paragraph.
- (d) "Assignee" is defined in the opening paragraph.
- (e) "Assignor" is defined in the opening paragraph.
- (f) "Assignee Obligations" is defined in Section 4.1.
- (g) "Assignor Obligations" is defined in Section 4.2.
- (h) "Building C2" is defined in Recital C.
- (i) "Childcare Center" is defined in Recital B.
- (j) "City" is defined in Recital A.
- (k) "Closing" shall have the meaning given in the PSA.
- (l) "Conditions of Approval" shall mean requirements imposed by the City as a condition of any land use entitlement necessary for the development of the Project.
- (m) "Consent" means the consent agreement to be executed by the City, attached hereto as Exhibit B.
- (n) "DA" is defined in Recital B.
- (o) "Developer" shall have the meaning given by the DA.
- (p) "Effective Date" is defined in Section 5.6.

- (q) "Execution Date" is defined in the opening paragraph.
- (r) "Environmental Mitigation Measures" shall mean Conditions of Approval imposed upon the Project pursuant to the California Environmental Quality Act, as identified in an adopted Mitigation Monitoring and Reporting Program applicable to the Project.
- (s) "Impact Fees" shall mean a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees for processing applications for governmental regulatory actions or approvals.
- (t) "Market Hall" is defined in Recital B.
- (u) "Oak Avenue Extensions" means, collectively, the Oak Avenue Phase 1 Extension and Oak Avenue Phase 2 Extension, as defined in the DA and PSA.
- (v) "Offsite Improvements" shall mean Public Infrastructure, excluding Public Infrastructure to be constructed on the Property.
- (w) "PALE" shall mean the approximately 33,981 square feet of land designated in the vesting tentative tract map for the Project as the Public Access and Landscape Easement on BART Property, together with approximately 8,529 square feet of land owned by the City adjacent thereto, to be subject to an Encroachment and Maintenance Agreement.
- (x) "Parcel 1" is defined in Recital C.
- (y) "Parties" are defined in the opening paragraph.
- (z) "Park Improvements" means the landscaping, playground equipment, bioretention basins, emergency vehicle access, sidewalks, and other improvements proposed in the entitlement application for the Project to be constructed on the PALE.
- (aa) "Paseo" means the paseo to be constructed between the Project's residential buildings and along the southeastern edge of Parcel 1 and northwestern edge of Parcel 2, as depicted on the vesting tentative tract map for the Project. "Paseo" also includes an initial asphalt driveway that will be constructed in the location of the Paseo for emergency vehicle access prior to full build-out of the Paseo improvements.
- (bb) "Project" is defined in Recital B.
- (cc) "Property" is defined in Recital A.
- (dd) "PSA" is defined in Recital A.

(ee) "Public Infrastructure" shall mean infrastructure and other improvements constructed for use by, or for the benefit of, the general public, including, without limitation, utilities, sidewalks, roads, other rights of way, and Park Improvements.

Section 1.3 Exhibits.

The following exhibits are attached to this Agreement, and are incorporated herein by this reference:

Exhibit A-1: Legal Description of the Property

Exhibit A-2: Legal Description of Parcel 1

Exhibit B: City's Consent

Exhibit C: Depiction of Portions of PALE to be Developed by each Party

ARTICLE 2. ASSIGNMENT
AND ASSUMPTION OF PSA

Section 2.1 Assignment and Assumption.

Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, Assignor's rights, title, and interest under the PSA to acquire Parcel 1 from the City for the purpose of developing, constructing, owning, and operating Building C2.

Section 2.2 Consideration.

At Closing, Assignee shall pay the City the Parcel 1 Purchase Price to acquire Parcel 1. The "Parcel 1 Purchase Price" is the lesser of \$2,200,000 or 20% of the Purchase Price paid under the PSA. If Assignee pays the City the Parcel 1 Purchase Price to acquire Parcel 1, Assignor agrees to repay Assignee the amount of the Parcel 1 Purchase Price, which obligation shall be secured by recording a deed of trust or other security instrument, to be approved as to form by the City Manager and City Attorney, in first lien position against the remainder of the Property (i.e., that part of the Property not including Parcel 1) at the time of Close of Escrow between Assignor and the City. Notwithstanding the forgoing if Assignor acquires the remainder of the Property (or a portion thereof), before Assignee acquires Parcel 1, then Assignor will pay to the City the Parcel 1 Purchase Price for the benefit of Assignee and Assignee shall pay the City \$1 to acquire Parcel 1.

Section 2.3 Consent and Release by City (PSA).

The City's consent and release to this partial assignment and assumption of the PSA is set forth in the Consent. Parties hereby mutually acknowledge and agree to every provision of the Consent.

ARTICLE 3. ASSIGNMENT AND ASSUMPTION OF DA

Section 3.1 Assignment by Assignor.

Assignor hereby assigns and delegates to Assignee the rights, title, duties, and interest of the Developer under the DA with respect to the development of Parcel 1 and the construction of Building C2.

Section 3.2 Assumption by Assignee.

Assignee hereby accepts and assumes from Assignor, Assignor's rights, title, duties, and interest under the DA, as assigned under Section 3.1; provided, however, that Assignee's obligations under the DA are expressly limited to the Assignee Obligations, as set forth in Article 4.

Section 3.3 Consent and Release by City (DA).

The City's consent and release to this partial assignment and assumption of the DA is set forth in the Consent. Parties hereby mutually acknowledge and agree to every provision of the Consent.

ARTICLE 4. OBLIGATIONS OF THE PARTIES

Section 4.1 Assignee Obligations.

(a) Assignee's obligations to develop the Project, perform Environmental Mitigation Measures and other Conditions of Approval, construct Offsite Improvements and other Public Infrastructure, and pay Impact Fees (the "Assignee Obligations"), shall consist of and be limited to the following obligations:

- (1) To develop Building C2 to operate as an affordable housing project as set forth in the DA;
- (2) To construct that portion of the Paseo located on Parcel 1;
- (3) To construct those Park Improvements planned to be located on the portion of the PALE depicted on Exhibit C attached hereto, which is adjacent and to the southwest of Parcel 1;
- (4) To construct any Public Infrastructure to be located on Parcel 1 and any Offsite Improvements required to be constructed by the Developer along that portion of the Mission Road right of way fronting onto Parcel 1;
- (5) To construct a bicycle connection north of Building C2;
- (6) Generally, to perform and comply with all Environmental Mitigation Measures and other Conditions of Approval that relate directly to the performance of the

foregoing obligations, including, in the performance of the Assignee Obligations, (i) compliance with the City's climate action plan; (ii) compliance with any transportation demand management or parking management plan for the Project; and (iii) compliance with any water quality control, flood control, engineering, or public safety conditions of approval; compliance with federal and state law, including but not limited to compliance with prevailing wage requirements and any obligation to obtain government approvals, with respect to Parcel 1 and Building C2; construction or undergrounding of any utility, but only directly serving Building C2 or located on Parcel 1 (subject to Government Code Section 66485, et seq.);

(7) To pay Impact Fees due and owing to the City pursuant to the DA for the 158 residential units to be constructed on Parcel 1, which are estimated as follows but will be finally determined at the time such Impact Fees are paid consistent with the provisions in the DA:

- (A) Sewer capacity fee: \$533,008,
- (B) Park impact fees: \$2,374,108,
- (C) Bike and pedestrian fees: \$20,066,
- (D) Public safety impact fee (police): \$26,686, and
- (E) Public safety impact fee (fire): \$62,268;

(8) To pay any other Impact Fees due and owing to any public agency other than the City for Parcel 1 or Building C2, whether calculated in proportion to the number of units in Building C2, the size of Parcel 1, or other measure that accounts for Assignee's proportional share of the fee; and

(9) To pay expedited plan check fees, but only if Assignee requests an expedited plan check.

(b) For greater clarity, and without limiting the generality of Subsection (a), Assignee shall not be responsible for, and the Assignee Obligations shall not include any obligations or requirements that do not directly relate to the development and operation of Parcel 1 and Building C2 or satisfaction of the obligations listed in Section 4.1(a). For non-exhaustive examples only:

(1) The performance of or compliance with any Environmental Mitigation Measure or Condition of Approval not directly relating to the development of Parcel 1 and Building C2 and the performance of the Assignee Obligations as defined in Section 4.1, including;

(2) The performance of any Environmental Mitigation Measure requiring construction of transportation Offsite Improvements, except any such improvements within the Mission Road right of way fronting Parcel 1 as provided in Section 4.1(a)(4), or requiring Assignee to fund more than its proportionate share of the cost of any such improvement;

(3) The construction of any improvement not described in Subsection (a), including, without limitation, (i) construction or undergrounding of any utility not on or serving Parcel 1 or Building C2; (ii) satisfaction of the Developer's public art commitment; or (iii) the construction of the Childcare Center, Market Hall, Oak Avenue Extensions, or other Project improvements or Off-Site Improvements to be located on any parcel other than Parcel 1, unless expressly identified in Subsection (a);

(4) The payment of any Impact Fee not described in Subsection (a); and

(5) Compliance with federal and state law, including but not limited to compliance with prevailing wage requirements and any obligation to obtain government approvals, except with respect to Parcel 1 and Building C2.

Section 4.2 Assignor Obligations.

Assignor shall be responsible for all obligations of the Developer, except for the Assignee Obligations, to develop the Project, perform and comply with Environmental Mitigation Measures and other Conditions of Approval, construct Offsite Improvements or other Public Infrastructure, and pay any and all Impact Fees associated with the Project (the "Assignor Obligations"). From and after the Effective Date, the Assignor shall not be responsible for the Assignee Obligations and Assignee shall not be responsible for performance of the Assignor Obligations.

ARTICLE 5. MISCELLANEOUS

Section 5.1 Further Assurances.

The Parties agree to take such further actions as may be necessary or advisable to effectuate, confirm, or document the assignment and assumption contemplated hereby.

Section 5.2 City Consent to Further Assignment.

To the extent applicable, this Agreement may not be assigned without the written consent of the City consistent with the assignment provisions of the DA and PSA.

Section 5.3 Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding, or unenforceability.

Section 5.4 Interpretation.

This Agreement shall be governed and interpreted in accordance with the laws of the state of California. This Agreement includes the contributions of both Parties, each of which is represented by competent counsel, and the rule stated in Civil Code Section 1654 that an agreement be construed against its drafter shall have no application hereto. Headings contained

in this Agreement are for convenience of reference only, and shall not alter the meaning of any provision hereof.

Section 5.5 Counterparts.

This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 5.6 Effective Date.

This Agreement shall be effective on the date fully executed by the Parties and the Consent has been duly executed by the City.

Section 5.7 Recordation.

Either this Agreement or a memorandum of this Agreement shall be recorded against the Property within ten (10) days of the Effective Date.

Section 5.8 Signatures.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Parties. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

[Signatures on the Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Execution Date.

ASSIGNOR:

SSF PUC Housing Partners, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

BRIDGE Housing Corporation,
a California nonprofit public benefit
corporation

By: _____
Name: _____
Title: _____

EXHIBIT A-1
PROPERTY LEGAL DESCRIPTION

EXHIBIT A-2
PARCEL 1 LEGAL DESCRIPTION

EXHIBIT B
CITY'S CONSENT AND RELEASE

The City hereby consents to the assignment and assumption set forth in this Agreement, and further agrees as follows:

1. Parcel 1 shall be conveyed to Assignee separately from the remainder of the Property to allow construction of Building C2 as contemplated under the PSA and DA, even if Assignor fails to Close on the remainder of the Property under the PSA, the City will convey Parcel 1 to Assignee or an Affiliate thereof at Closing in consideration of the lesser of \$2,200,000 or 20% of the Purchase Price paid under the PSA for all Property.
2. Assignee's obligations to the City under the PSA, DA, or other Project entitlements shall be limited to the Assignee Obligations, regardless of whether the Assignor Closes on the remainder of the Property or the remainder of the Project is constructed.
3. The City hereby affirms that construction of the Affordable Units, as a component of the Project, is a priority for the City. It is the intent of the City that Assignee have the ability to develop Building C2 independently from the market rate components of the Project and at the earliest possible opportunity. If warranted by changed circumstances, and at the City's discretion, the City will work with Assignee in good faith to refine and further delineate Assignee's obligations hereunder.
4. From and after the Execution Date of this Agreement, Assignor is fully released from the Assignee Obligations, Assignee is fully released from the Assignor Obligations, a default by the Assignor will not constitute a default by Assignee, and a default by Assignee will not constitute a default by Assignor. Notwithstanding anything to the contrary in this Agreement, the PSA, or the DA, the City may not exercise any remedy, whether contractual, regulatory, or otherwise, (i) with respect to Assignor because Assignee defaults under the Assignee Obligations, or (ii) with respect to Assignee because Assignor defaults under the Assignor Obligations. The limitations contained herein shall include the failure of the Assignor or Assignee to Close or to commence and complete construction within any specified time periods.

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____
Mike Futrell, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT C

DEPICTION OF PORTIONS OF PALE TO BE DEVELOPED BY EACH PARTY

3426080.1