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City of South San Francisco
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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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of _____, 2019 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**."

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**." 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 _____ and described in the Project Approvals (collectively, "**Offsite Improvements**").

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 _____, 2019 by Resolution No. _____, 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 _____, 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); 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 _____, 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 _____, 2019, at a duly noticed public hearing, adopted Ordinance No. _____ 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 _____, 20___, as approved by the San Mateo County Oversight Board 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 _____, 2019 and the San Mateo Countywide Oversight Board on _____, 20___. 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 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 $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 $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 I 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 Sheet _____ of 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 _____ ("**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 (*insert formal name of entitlement documents*) ("**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 that 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 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 is 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 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 and Applicable Law. If the Chief Planner or his/her designee finds that the proposed amendment or modification is minor, consistent with this Agreement 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.

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 __ 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.

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

APPROVED AS TO FORM:

By: _____
City Attorney

DEVELOPER

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

By: _____
Name:
Title:

Exhibit A

Description and Diagram of Project Site

Exhibit B:

List of Project Approvals [to be completed]

- 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 _____ by Resolution No. _____.

- Conditional Use Permit (_____) for conditional uses and incentive bonuses and parking determination approved by the City Council on _____ by Resolution No. _____.

- Design Review (_____) approved by the City Council on _____ by Resolution No. _____.

- Vesting Tentative Tract Map (_____) approved by the City Council on _____ by Resolution No. _____.

- Build-To Line Waiver along Mission Road (_____) approved by the City Council on _____ by Resolution No. _____.

- Active Frontage Chief Planner Waiver for 50% Active Use along Mission Road (_____) approved by the City Council on _____ by Resolution No. _____.

- Ground Floor Entrance Chief Planner Alternative Design Approval for Buildings C1 and C2 facing BART right of way and Colma Creek(_____) approved by the City Council on _____ by Resolution No. _____.

- 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) (_____) approved by the City Council on _____ by Resolution No. _____.

- Purchase and Sale Agreement (_____) approved by the City Council on _____ by Resolution No. _____ and the San Mateo Countywide Oversight Board by Resolution No. __. .

- Development Agreement (_____) approved by the City Council on _____ by Ordinance No. _____.

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 Childcare 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 E

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