

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(FORMER PUC SITES B AND C)

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“this **Agreement**”) is made and entered into as of _____, 2019 (the “**Date of Agreement**”) by and between the City of South San Francisco (“**Seller**” or “**City**”) and SSF PUC Housing Partners, LLC, a Delaware limited liability company (“**Buyer**” or “**Developer**”). Seller and Buyer are each individually referred to herein as a “**Party**” and, collectively, as the “**Parties**.”

RECITALS

A. WHEREAS, Seller is the fee owner of 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. Collectively, Site C1, Site C2, Site B and the Oak Avenue Phase 1 Extension Property are the “**Property**.” Additionally, the City will obtain and 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).

The Property includes vacant properties purchased in 2008 by the former South San Francisco Redevelopment Agency (“**RDA**”) 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 ground water, the future Oak Avenue extension, and development of the City's Civic Campus Site on Former PUC Site A.

B. WHEREAS, on June 29, 2011, the legislature of the State of California adopted Assembly Bill x1 26 (“**AB 26**”), which amended provisions of the Redevelopment Law, which together with the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, which upheld AB 26 (together with AB 1484, the “**Dissolution Law**”), dissolved the RDA on February 1, 2012.

C. WHEREAS, pursuant to the Dissolution Law, the Successor Agency to the RDA (“**Successor Agency**”) prepared a Long Range Property Management Plan (“**LRPMP**”), which the former Oversight Board to the Former South San Francisco Redevelopment Agency (“**Former Oversight Board**”) approved on May 21, 2015, and the Department of Finance (“**DOF**”) approved on October 1, 2015.

D. WHEREAS, the LRPMP established a plan for transferring or selling the former RDA properties, including those properties identified in the LRPMP to be transferred from the Successor Agency to the City for redevelopment activities consistent with the Redevelopment Plan and the LRPMP, including the Property in accordance to the requirements set forth in the LRPMP.

F. WHEREAS, the City and Taxing Entities entered into an Amended and Restated Master Agreement for Taxing Entity Compensation, dated October 18, 2016 (“**Master Compensation Agreement**”), which governs the distribution of any net proceeds received from the sale of the Property.

G. WHEREAS, pursuant to the LRPMP and Dissolution Law, the Successor Agency transferred its real property assets to the City, including the Property, for future development subject to the provisions of the Master Agreement for Taxing Entity Compensation by all Taxing Entities.

H. WHEREAS, in late October 2017, staff sent a request for proposals (“**RFP**”) to the selected final developer teams and in July 2018, after a competitive RFP process, the City and Buyer entered into an Exclusive Negotiation Rights Agreement (“**ENRA**”) that established a mutual understanding among the City and the Buyer regarding the potential development of the Property, as extended by the Parties.

I. WHEREAS, on July 1, 2018, the Former Oversight Board was dissolved and the San Mateo Countywide Oversight Board (“**Countywide Oversight Board**”) was established in accordance with California Health and Safety Code § 34179(j). The Countywide Oversight Board is responsible for providing direction and oversight to the Successor Agencies as they wind-down the affairs of their former redevelopment agencies, including the sale terms of the Property in accordance with the Dissolution Law and LRPMP.

J. WHEREAS, the LRPMP includes development plans for the Property consistent with this Agreement. As described in Section 2.6 of the LRPMP:

“[f]ollowing the purchase of the former PUC properties, the City embarked on preparing an area wide plan for the northerly portion of El Camino Real between

Chestnut Avenue and the SSF BART station. The central aim of the plan is to develop the area into a vibrant high density mixed-use neighborhood allowing for improved auto access as well as attractive and accessible bicycle, pedestrian and open space connections. Located in the geographic heart of South San Francisco, the former PUC properties were acquired by the [Successor] Agency in order to redevelop them into new mixed-use, transit-oriented developments that would create a vibrant Transit Village district within South San Francisco. The properties are advantageously located at the City's busiest crossroads at Chestnut Avenue and El Camino Real. They are located in close proximity to the South San Francisco Bay Area Rapid Transit (BART) Station and the City's Transit Village Zoning District just north of the properties. The properties are also near key public amenities including Orange Memorial Park, the Centennial Way pedestrian and bike trail and the Municipal Services Building. The properties are adjacent to the right-of-way for the underground BART."

K. WHEREAS, consistent with the approved LRPMP, and subject to the terms of this Agreement, and contingent upon approval of the Countywide Oversight Board, the Seller wishes to sell the Property to Buyer at the Purchase Price required in Section 2.2, for the Buyer to obtain certain land use entitlements from the City, and to require the Buyer to construct the Project defined in Recital L, below.

L. WHEREAS, 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 and a childcare center (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**") and payment of \$5,500,000 towards construction costs for construction of the Oak Avenue Phase 2 connection of Oak Avenue from Antoinette Lane to El Camino Real.

M. WHEREAS, 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 SOC's ("**ECA**") and adopted a Mitigation Monitoring and Reporting Plan identifying all applicable mitigation measures from the EIRs that are applicable to the Project ("**MMRP**").

N. WHEREAS, on _____, 2019, after duly noticed public hearing and review by the Planning Commission including making a finding, pursuant to Government Code Section 65402, that the Project was consistent with the South San Francisco General Plan and the El Camino Real/Chesnut Area Plan, 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); this Agreement; and a Development Agreement in accordance with SSFMC Chapter 19.60 (“**Development Agreement**”) to be executed concurrently with this Agreement. The entitlements listed in this Recital M are collectively referred to herein as the “**Project Approvals.**”

O. WHEREAS, in compliance with Section 6.10 of the Development Agreement between the City and Buyer, the Buyer has agreed to pay prevailing wages pursuant to Labor Code Section 1720 *et seq.* for the Project.

P. WHEREAS, pursuant to Resolution No. _____ dated _____, 2019, the Seller found that the sale of the Property is consistent with the disposition provisions of the LRPMP and recommended that the Oversight Board approve this Agreement, and Buyer and Seller acknowledge the obligation to obtain Countywide Oversight Board approval pursuant to Health and Safety Code Section 34181(a)(1) pursuant to Section 1.2 of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. RECITALS/OB APPROVAL.

1.1 Recitals and Exhibits. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

1.2 OB Approval. The Parties acknowledge that the sale of the Property under this Agreement is fully and expressly contingent on approval of the terms of sale by the Countywide Oversight Board pursuant to Health and Safety Code Section 34181(a)(1). The date of approval by the Countywide Oversight Board shall be the “**OB Approval Date.**” The Parties shall cooperate in good faith to obtain Countywide Oversight Board approval pursuant to the Schedule of Performance set forth in Section 5.6. In the event that Countywide Oversight Board approval is not obtained within one (1) year of the Date of Agreement (“**Outside OB Approval Date**”), which date is subject to Force Majeure and may be extended the City Manager in his or her reasonable discretion, this Agreement shall terminate and have no further force of effect and the ENRA Deposits shall be refunded to Buyer, along with any accrued interest, along with any unused portion of the ENRA Reimbursement Deposit (each type of deposit contemplated by the ENRA is defined in more detail below in Section 3.5).

2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, and expressly contingent of the approval of the Countywide Oversight Board pursuant to Section 1.2 of this Agreement, Seller agrees to sell the Property to Buyer, and Buyer hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by Buyer to Seller (the “**Purchase Price**”) is FIVE MILLION FIVE HUNDRED THOUSAND (\$5,500,000) subject to the applicable ENRA Deposit credits pursuant to Section 3.5, below. The Purchase Price shall be paid in cash at the Closing.

3. ESCROW.

3.1 Escrow Account. Within ten (10) business days after the OB Approval Date, Seller will open an interest-bearing escrow account (the “**Escrow**”) maintained by First American Title Insurance Company at the address noted in Section 13.8 (the “**Escrow Holder**”), with interest accruing to the benefit of Buyer. Escrow Holder shall perform all escrow and title services in connection with this Agreement. The Parties understand and agree that the officer at the Escrow Holder must have experience with handling escrow in San Mateo County. First American Title Company shall be the Escrow Holder unless unwilling or unable to perform the functions or the Parties mutually agree otherwise in writing.

3.2 Opening of Escrow. Within ten (10) business days after the OB Approval Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the “**Opening of Escrow.**”

3.3 Buyer’s Deposit. The ENRA Deposits defined in Section 3.4, below, shall be held in Escrow as the “**Buyer’s Deposit**”. The Buyer’s Deposit shall become non-refundable except in the event of a failure to Close based on any of the following Buyer’s Conditions to Closing, in which case the Buyer shall be entitled to a refund of the Buyer’s Deposit: 5.2(a) [No Default], 5.2(b) [Representations and Warranties], 5.2(c) [Title Policy], 5.2(d) [Absence of Proceedings], 5.2(e) [No Material Adverse Change], 5.2(g) [Project Approvals], 5.2(h) [Permits], 5.2(i) [No Leases or Parties in Possession], 5.2(j) [Remediation Plan Approval], 5.2(k) [Compliance with Dissolution Law], and 5.2(l) [Execution and Delivery of Documents], 5.2(m) [Third Party Approvals], 5.2(n) [FEMA Approval], and/or 5.2 (o) [Subdivision].

3.4 Application of ENRA Deposits. Pursuant to Section 3(c) and Section 5 of the ENRA, Buyer has already submitted directly to Seller the following deposits: (i) Fifty Thousand Dollars (\$50,000) to cover the actual costs that the Seller has incurred and will incur in furtherance of this Agreement (“**ENRA Reimbursement Deposit**”), (ii) One Hundred and Fifty Thousand Dollars (\$150,000) as an initial deposit, fully creditable against the Purchase Price (“**ENRA Deposit**”), and (iii) Sixty Seven Thousand and Eighty Three Dollars (\$67,083) to extend the term of the ENRA to December 31, 2019 (“**ENRA Extension Deposit**”). Together the ENRA Deposit and the ENRA Extension Deposit are the “**ENRA Deposits.**” Seller has deposited the ENRA Deposits in an interest bearing account and any interest, when received by Seller, will become part

of the ENRA Deposits. On or before expiration of this Agreement, the Seller may, draw on the ENRA Reimbursement Deposit to reimburse the Seller's cost for third-party assistance and staff time in the negotiations for and preparation of this Agreement. Upon Closing, the Seller will apply the ENRA Deposits and any unused portion of the ENRA Reimbursement Deposit (if any) to the Purchase Price.

3.5 Environmental Remediation Regulatory Approval Successor Agency Assistance. At Closing, the Buyer agrees to take title of the Property in AS IS WHERE IS condition with no environmental remediation work required by or indemnities from the Seller or the City. Seller, at Buyer's expense, agrees to cooperate with Buyer to obtain regulatory approval of the necessary environmental work for the Property (including but not limited to the California Land Reuse and Revitalization Act) to be suitable for unrestricted residential use consistent with the uses proposed in the Project Approvals prior to and as a Buyer condition to Closing. Buyer will then manage and complete the remediation work necessary to make the Property suitable for unrestricted residential use consistent with the uses proposed in the Project Approvals after Closing. After Closing, Seller shall have no further obligations with respect to environmental and/or natural hazards remediation costs.

4. PROPERTY DISCLOSURE AND PRE-CLOSING REQUIREMENTS.

4.1 Condition of Title/Preliminary Title Report. At the time provided on the Schedule of Performance, the City shall cause the Escrow Holder to issue an updated preliminary title report for the Property to Buyer ("**Preliminary Title Report**"). Within thirty (30) calendar days from receipt, Buyer shall review the Preliminary Title Report and deliver to Seller a written notice indicating any disapproved exceptions ("**Disapproved Exceptions**"). Buyer may not disapprove the following: (a) the lien of any non-delinquent property taxes and assessments (which, if any exist, shall be prorated by the Escrow Holder at Closing); (b) the Memorandum of Agreement, (c) the covenants, conditions and restrictions set forth in the Grant Deed, (d) the Development Agreement (e) the Affordable Housing Agreement with respect to Site C2 only; and (f) commercially reasonable standard printed exceptions in the Preliminary Report (the "**Pre-Approved Exceptions**"). The Pre-Approved Exceptions and those exceptions accepted by Buyer after review of the Preliminary Title Report as provided herein are hereinafter referred to as the "**Condition of Title.**" Subject to the Seller's covenant in Section 6.1(b) to neither cause nor voluntarily permit, any new lien, encumbrance or any other matter that changes the condition of title to the Property, if any exceptions other than the Pre-Approved Exceptions are reported by the Escrow Holder then any such new exception shall be Disapproved Exceptions unless the new exceptions (i) are caused by Buyer, or (ii) are consented to or waived in writing by Buyer in its sole discretion.

4.2 Environmental and Natural Hazards Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substances are located on or beneath the real property to provide written notice of same to the Buyer of real property. Other applicable laws require Seller to provide certain disclosures regarding natural hazards affecting the Property. Seller warrants that as of the Date of Agreement, it has provided to Buyer all reports of potential hazardous substances located on or beneath the Property that Seller possesses. Seller further agrees to make all necessary disclosures required by law.

5. CLOSING, PAYMENT OF PURCHASE PRICE AND POST CLOSING OBLIGATIONS.

5.1 Closing. The closing (the “**Closing**” or “**Close of Escrow**”) will occur for the Property no later than the date set forth in the Section of Performance (see Section 5.6), unless such date for Closing is extended by Force Majeure Delay or as provided on in Sections 5.6.1, 5.6.2 or 5.6.3 herein (“**Closing Date**”). In addition to the extensions of the Closing Date in Section 5.6.1, 5.6.2 and 5.6.3, the Closing Date shall be extended where a Party’s Conditions to Closing under Section 5.2 (Buyer) and 5.3 (Seller) have not been satisfied as a result of a Force Majeure Event.

5.2 Buyer’s Conditions to Closing. Buyer’s obligation to purchase the Property is subject to the satisfaction of each and all of the following conditions precedent (“**Buyer Conditions Precedent**”) or Buyer’s written waiver thereof (each in Buyer’s sole discretion) on or before the Closing Date:

(a) No Default. Seller is not in default and has performed all obligations to be performed by Seller pursuant to this Agreement, and the City is not in default under the Development Agreement.

(b) Representations and Warranties. Seller’s representations and warranties herein are true and correct in all material respects as of the Closing Date.

(c) Title Policy. The Escrow Holder shall, upon payment of Escrow Holder’s regularly scheduled premium, be irrevocably committed to issue an ALTA Extended Title Policy to Buyer upon recordation of the Grant Deed and effective as of the Closing Date, insuring title to Buyer in the full amount of the Purchase Price and subject only to the Pre-Approved Exceptions or the Condition of Title.

(d) Absence of Proceedings. There shall be an absence of any condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the Property or this Agreement which would materially and adversely affect Buyer’s intended uses of the Property or the value of the Property.

(e) No Material Adverse Change. There shall not have occurred between the Date of Agreement and the Closing a material adverse change to the physical condition of the Property that renders all or a material portion of the Property unusable for the Buyer’s intended use for the Project.

(f) Financing Commitments. Buyer shall have financing commitments sufficient for the acquisition of the Property and construction of the Project and Buyer’s construction loan, if any, shall have closed or shall be ready to close concurrently with the Closing.

(g) Project Approvals. The Project Approvals shall be final and non-appealable, and if any appeals, legal challenges, requests for rehearing, or referenda have been filed or instituted, such appeals, legal challenges, requests for rehearing, or referenda shall have been fully and finally resolved in a manner acceptable to Buyer in its sole and absolute discretion and such that no further appeals, legal challenges, requests for rehearing, or referenda are possible.

(h) Permits. Subject to payment of the applicable fees, the City shall be ready and willing to issue the ministerial demolition, grading, foundation permit and building permit(s) necessary for the Buyer to meet its obligations in the Schedule of Performance pursuant to Section 5.6.

(i) No Leases or Parties in Possession. Seller shall have demonstrated the ability to deliver fee title to the Property to Buyer free and clear of any tenants, lessees, licensees or any third party occupants or parties in possession.

(j) Remediation Plan Approval. Buyer shall, in the Buyer's reasonable business judgment, have obtained regulatory approval of any necessary environmental work for the Property (including but not limited to the California Land Reuse and Revitalization Act) to be suitable for residential use consistent with the uses proposed in the Project Approvals and that such regulatory approval would not cause or result in a material adverse delay in the time to commence or construct the Project or a material adverse impact to the Project or the use of the Project.

(k) Compliance with Dissolution Law. Seller shall have complied with all requirements and obtained any and all approvals required under the Dissolution Law with respect to Closing.

(l) Execution and Delivery of Documents by Seller. Seller shall have executed and acknowledged the Grant Deed and Memorandum of Agreement, and Seller shall have executed (and, where appropriate, acknowledged) and delivered into escrow all other documents that Seller is required to deliver into escrow pursuant to Section 5.5.1(a).

(m) Third Party Approvals. The Seller has obtained all third party real property approvals and real property rights necessary to construct the Oak Avenue Phase 1 Extension and Off-Site Improvements as defined in the Project Approvals ("**Off-Site Real Property Interests**"); provided, however, Buyer shall obtain any required permits or right of entry for the construction of the Oak Avenue Phase 1 Extension from BART and/or Kaiser, or other relevant parties, including any permits necessary to perform construction work on top of the underground BART tunnel consistent with such Off-Site Real Property Interests.

(n) FEMA Approval. FEMA shall have approved removal of the Property from the 100 year floodplain such that the Project Approvals do not require any material modification or amendment.

(o) Subdivision. The City shall have approved any necessary legal subdivision of the Property necessary to transfer the Property and implement the Project as contemplated in the Project Approvals, and such subdivision approval shall have been recorded (including, if any applicable exemptions).

5.3 Seller's Conditions to Closing. Seller's obligation to sell the Property is subject to the satisfaction of each and all of the following conditions precedent ("**Seller Conditions Precedent**") or Seller's written waiver thereof (each in Seller's sole discretion) on or before the Closing Date:

(a) No Default by Buyer. Buyer is not in default and has performed all obligations to be performed by Buyer pursuant to this Agreement.

(b) Development Agreement. The Development Agreement is executed by Buyer, is effective, is not subject to referendum, and the Buyer is not in default under the Development Agreement.

(c) Representations and Warranties. Buyer's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date.

(d) Buyer's Financing Commitments. Buyer has provided Seller written confirmation, acceptable to Seller, which approval shall not be unreasonably withheld, that Buyer has obtained financing commitments for the acquisition and construction financing for the acquisition of the Property and the construction of the Project.

(e) Permits. The Buyer shall have submitted applications to the City and subject to payment of the applicable fees, the City shall be ready and willing to issue the ministerial demolition, grading and foundation permit(s) necessary for the Buyer to Commence of Construction as set forth in the Performance Schedule set forth in Section 5.6.

(f) Compliance with Dissolution Law. Seller shall have complied with all requirements and obtained any and all approvals required under the Dissolution Law with respect to Closing.

(g) Execution and Delivery of Documents by Buyer. Buyer shall have executed and acknowledged the Grant Deed and Memorandum of Agreement, and Buyer shall have executed (and, where appropriate, acknowledged) and delivered into escrow all other documents that Buyer is required to deliver into escrow pursuant to Section 5.5.1(b).

(h) Delivery of Funds. Buyer shall have delivered through escrow the Purchase Price and such other funds, including escrow costs, recording fees and other closing costs as are necessary to comply with Buyer's obligations under this Agreement.

5.4 Conveyance of Title. Seller will deliver marketable fee simple title to Buyer at the Closing, subject only to the Condition of Title pursuant to Section 4.1. The Property will be conveyed by Seller to Buyer in an "as is" condition, with no warranty, express or implied, by Seller as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by Section 12); provided, however, that the foregoing shall not relieve Seller from disclosure of any such conditions of which Seller has actual knowledge.

5.5 Closing.

5.5.1 Delivery of Documents and Closing Funds. At or prior to Closing, Seller and Buyer shall each deposit such other instruments as are reasonably required by the Escrow Holder or otherwise required to close the escrow and consummate the conveyance of the Property in accordance with the terms hereof, including but not limited to the following:

(a) Deliveries by Seller. At or before Closing, Seller shall deposit the following into escrow:

A. one (1) original executed and acknowledged Grant Deed substantially in the form attached hereto as Exhibit B (“**Grant Deed**”);

B. one (1) original executed and acknowledged Memorandum of Agreement, substantially in the form attached hereto as Exhibit D (“**Memorandum of Agreement**”);

C. one (1) duly executed non-foreign certification for the Property in accordance with the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended; and

D. one (1) duly executed California Form 593-W Certificate for the Property or comparable non-foreign person affidavit to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131.

(b) Deliveries by Buyer. At or prior to Closing, Buyer shall deposit the following into escrow:

A. immediately available funds in the amount, which together with the Buyer’s Deposit plus interest thereon, if any, is equal to an amount necessary to consummate the Closing, including the Purchase Price, escrow and Title Policy costs set forth in Section 5.5.5;

B. one (1) original executed and acknowledged Grant Deed;

C. one (1) original executed and acknowledged Memorandum of Agreement; and

D. one (1) original executed Preliminary Change of Ownership Report for the Property.

E. one (1) fully executed Affordable Housing Agreement as required and defined in the Development Agreement.

5.5.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Seller and Buyer with respect to the conveyance of the Property to Buyer, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties shall use reasonable good faith efforts to close the escrow for the conveyance of the Property in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and each Party will cancel its own policies, if any, as of the Closing. All funds received in the escrow shall be deposited in interest-bearing accounts for the benefit of the depositing Party in any state or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such accounts. If, in the opinion of either Party, it is necessary or convenient in order to accomplish the Closing, such Party may provide supplemental escrow instructions; provided that if there is any inconsistency between this

Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Closing shall take place as set forth in Section 5.5.4 below. Escrow Agent is instructed to release Seller's and Buyer's escrow closing statements to the respective parties.

5.5.3 Authority of Escrow Agent. Escrow Agent is authorized to, and shall:

(a) Pay and charge Buyer for the premium of the Title Policy, including any endorsements requested by Buyer.

(b) Pay and charge Buyer for escrow fees, charges, and costs as provided in Section 5.5.5.

(c) Disburse to Seller the Purchase Price, less Seller's share of any fees, costs and expenses allocated to Seller herein, and record the Grant Deed when both the Buyer Conditions Precedent and Seller Conditions Precedent have been fulfilled or waived in writing by Buyer and Seller, as applicable. Immediately following recordation of the Grant Deed, Escrow Agent shall record the Memorandum of Agreement, Development Agreement, Affordable Housing Agreement and all other recordable documents delivered into escrow for the Closing.

(d) Do such other actions as necessary, including obtaining and issuing the Title Policy, to fulfill its obligations under this Agreement.

(e) Direct Seller and Buyer to execute and deliver any instrument, affidavit, and statement, and to perform any act, reasonably necessary to comply with the provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated thereunder.

(f) Prepare and file with all appropriate governmental or taxing authorities uniform settlement statements, closing statements, tax withholding forms including IRS 1099-S forms, and be responsible for withholding taxes, if any such forms are provided for or required by law.

5.5.4 Closing. The escrow for conveyance of the Property shall close ("**Close of Escrow**") within thirty (30) days after the satisfaction, or waiver by the appropriate Party, of all of the Buyer Conditions Precedent and all of the Seller Conditions Precedent, but not later than the "Outside Date" as defined in the Schedule of Performance. For purposes of this Agreement, the "Closing" shall mean the time and day the Grant Deed is recorded with the San Mateo County recorder.

5.5.5 Closing Costs. Buyer will pay all escrow fees (including the costs of preparing documents and instruments), and recording fees. Buyer will also pay title insurance, title report costs and all transfer taxes. Seller will pay all governmental conveyance fees, where applicable.

5.5.6 Pro-Rations. At the Close of Escrow, the Escrow Agent shall prorate the property taxes and assessments as of the Close of Escrow based upon the most recent tax bill available, including any property taxes which may be assessed after the Close of Escrow but which

pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered. Seller does not pay ad valorem taxes.

5.6 Schedule of Performance. Subject to Force Majeure Delay as set forth in Section 7.4 and the extensions to Buyer's obligations provided in Sections 5.6.1, 5.6.2, and 5.6.3, as applicable, the Parties shall complete the following in the time set forth on Exhibit C ("**Schedule of Performance**"). Notwithstanding the foregoing, if the Seller and Buyer mutually agree to a phasing plan for the construction of the Project, which includes distinct timeframes for the Commencement of Construction or the Substantial Completion of each defined phase that conflict with those set forth in the Schedule of Performance and that move forward the deadlines set forth in Schedule of Performance, the provisions of such phasing plan shall control. These obligations shall survive Closing, as applicable.

5.6.1 Seller's Extension. The deadlines set forth in Section 5.6 shall each be subject to a ninety (90) day extension, provided (1) that the Buyer submits a written request for an extension prior to the deadline which shall include the rationale for the request and summary of the actions Buyer has taken to satisfy the obligation prior to the deadline and (2) the extension request is approved by the City Manager, which such approval shall not be unreasonably withheld. If granted, such 90-day extension shall extend all following dates in the schedule by 90-days, unless the City Manager approval expressly states otherwise.

5.6.2 Buyer's Extension. At the Buyer's sole discretion, the deadlines set forth in Section 5.6 shall be subject to a maximum of four extensions of 30 days (no more than 120 days total) upon written notice to Seller and Buyer's payment to Seller of \$25,000 for each such 30-day extension. Such extensions shall extend each following dates in the schedule.

5.6.3 City Review. The Developer's deadlines set forth on the Schedule of Performance are each contingent upon the City reviewing and providing comments or approving plans and permit applications submitted by Buyer within twenty one (21) days of submission of complete plans and/or applications. This 21 day period shall commence anew each time that Buyer submits revised plans in response to City comments on the prior version of the plans. Buyer shall be solely responsible for submitting complete plans that satisfy all federal, state and local code and City requirements. Buyer shall be responsible for payment of all required City building permit fees including costs for City to retain contract plan check services. In the event that City review exceeds 21 days, the deadlines set forth in Section 5.6 shall all be extended one day for each day the City review exceeds 21 days.

5.7 Compliance with Development Agreement. Buyer and City shall each execute, record and comply with all obligations under the Development Agreement, as applicable (including but not limited to those obligations of Buyer under Development Agreement) in substantially the form set forth on Exhibit C.

5.8 Maintenance of Property. Prior to Close of Escrow, the City, acting on behalf of the Successor Agency, shall be solely responsible for the maintenance of the Property. After Close of Escrow and through completion of construction for the entire Project, Buyer shall use commercially reasonable efforts to maintain any portion of the Property that has not been constructed and that is not in active construction in either approximately the same condition as that

at the time of Close of Escrow (for portions of the property where grading or construction has not occurred) or in its then current construction status with open areas seeded or otherwise managed to minimize erosion and dust from the Property and existing vegetation trimmed to minimize fire hazards. Buyer shall also erect and maintain a temporary fence around the Project construction site, with the type of fence subject to the approval by the Chief Planner, which approval shall not be unreasonably withheld, delayed or conditioned.

5.9 Allocation of Net Proceeds to Taxing Entities. Upon disbursement to Seller of the Purchase Price, Seller will remit the Net Unrestricted Proceeds (defined below) to the applicable Taxing Entities in accordance with the Amended and Restated Master Agreement for Taxing Entity Compensation. This obligation survives Closing and is the sole and exclusive obligation of the Seller.

For purposes of this Agreement and the Amended and Restated Master Agreement for Taxing Entity Compensation, “**Net Unrestricted Proceeds**” means the sale proceeds received by the Seller for the sale of the Property, less: (i) costs incurred by the Seller for expenses incurred in connection with the management and disposition of the Property, including reasonable and actual costs incurred for property management, maintenance, insurance, marketing, appraisals, brokers' fees, escrow, closing costs, survey, attorneys' and consultants' fees, and other reasonable costs incurred, including reasonable compensation for Seller staff performing functions associated with the management, maintenance and disposition of the Property provided that the Seller shall first apply any revenue generated from license, permit, lease, right-of-entry, or similar agreements received by the Seller to offset the management, insurance and maintenance costs of the Property (collectively, “**Permissible Expenditures**”), and (ii) any proceeds of sale that are restricted by virtue of the source of funds (e.g. grant funds or the proceeds of bonds) that were used for the original acquisition of the Property. Upon sale of Property, along with each Taxing Entity's pro-rata share of the Net Unrestricted Proceeds, the Seller shall deliver to the Taxing Entities an accounting of all such costs, expenses and restricted proceeds related to that particular parcel (“**Sale Accounting**”).

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Effective Date provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have three (3) business days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 7.3 will apply.

(a) Authority. Seller is a municipal corporation, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement, subject to Section 1.2. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(b) Encumbrances. Other than the exceptions set forth in the Preliminary Title Report, Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any agreement to do so, and there are no liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as disclosed in the Preliminary Report. Seller shall not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, as long as this Agreement is in force.

(c) No Right of Possession. There are no agreements, including any leases, licenses and occupancy agreements, affecting the Property. There are no agreements which will be binding on the Buyer or the Property after the Close of Escrow. Other than the utility easements set forth on the Preliminary Title Report, no person or entity other than Seller has the right to use, occupy, or possess the Property or any portion thereof. Seller will not enter into any lease or other agreement affecting the Property or any portion thereof without the written consent of Buyer.

(d) No Conflict. Seller's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Seller is a party or by which Seller is bound.

(e) No Litigation or Other Proceeding. To Seller's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Seller to perform its obligations under this Agreement, or that would adversely affect the Property or Buyer's intended use of the Property for the Project.

(f) No Seller Bankruptcy. Seller is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Seller's assets has been made.

(g) Condition of Property. Seller has no notice of any pending or threatened action or proceeding arising out of the condition of the Property or any alleged violation of any Environmental Laws. Except as otherwise disclosed by City and provided in Section 3.6, to Seller's actual current knowledge, the Property is in compliance with all Environmental Laws. The Seller will not make or allow any material adverse change to the condition of the Property.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement are conditions precedent to Buyer's obligation to proceed with the Closing hereunder. The foregoing representations and warranties shall not be deemed merged into the deed upon closing and shall survive the Close of Escrow until the satisfaction of the Buyer's Post-Closing Obligations under Section 5.6 and shall survive any earlier expiration or termination of this Agreement for a period of twelve (12) months.

6.2 Buyer's Representations and Warranties. In addition to the representations, warranties and covenants of Buyer contained in other sections of this Agreement, Buyer hereby

represents, warrants and covenants to Seller that the statements below in this Section 6.2 are each true as of the Date of Agreement, and, if to Buyer's actual knowledge any such statement becomes untrue prior to Closing, Buyer shall so notify Seller in writing and Seller shall have at least three (3) business days thereafter to determine if Seller wishes to proceed with Closing. If Seller determines it does not wish to proceed, then the terms of Section 7.3 will apply.

(a) Authority. Buyer is a limited liability company. Buyer has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

(b) No Bankruptcy. Buyer is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement are conditions precedent to Seller's obligation to proceed with the Closing hereunder. The foregoing representations and warranties shall survive the Closing and continue until satisfaction of the Buyer's Post-Closing Obligations under Section 5.6.

7. DEFAULT, REMEDIES, TERMINATION.

7.1 Default Remedies - General. Failure by either Party to perform any action or covenant required by this Agreement within thirty (30) days following receipt of written Notice from the other Party specifying the failure shall constitute a "**Default**" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such thirty (30) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion. Subject to the limitations of Section 7.2 below, any default by the Buyer or Seller under the Development Agreement which is not cured following notice and expiration of any applicable cure periods thereunder shall also constitute a Default under this Agreement, and upon occurrence of such Default and without any right to further notice or additional cure period, the non-defaulting party shall have all remedies available to it under this Agreement, including the right to terminate this Agreement as set forth in Section 7.3 below.

7.2 Legal Actions.

7.2.1 Institution of Legal Actions and Remedies. Upon the occurrence of a Default under this Agreement, the non-defaulting Party shall have the right to institute any action at law or in equity to cure, correct, prevent or remedy such Default, subject to the express limitations on remedies provided in this Section 7.2.1. Neither Party shall have the right to recover any punitive, consequential, or special damages. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California, or in the Federal District Court for the Northern District of the State of California.

7.2.1.1 Default by Buyer; Seller's Remedies. The Seller's remedies shall be expressly limited as follows:

a. Pre-Closing. Upon the occurrence of a Default by Buyer that occurs before Closing the Seller's remedies shall be limited to (i) liquidated damages pursuant to Section 7.2.2 and (ii) termination of this Agreement pursuant to Section 7.3.

b. Post-Closing. Upon the occurrence of a Default by Buyer that occurs after Closing, the Seller's remedies shall be limited to obtaining specific performance, declaratory or injunctive relief, or terminating this Agreement.

7.2.1.2 Default by Seller; Buyer's Remedies. Upon the occurrence of a Default by Seller under this Agreement, Buyer's remedies shall be limited to obtaining specific performance, declaratory or injunctive relief, or terminating this Agreement.

7.2.2 Liquidated Damages. SUBJECT TO NOTICE AND EXPIRATION OF APPLICABLE CURE PERIODS AND ANY PERMITTED EXTENSIONS OF TIME AS PROVIDED IN THIS AGREEMENT, IF IN THE EVENT OF A BUYER DEFAULT AS SET FORTH IN 7.2.1.1(a), THE SELLER WILL SUFFER DAMAGES AND THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, IN THE EVENT OF A CLOSING DEFAULT, BUYER, WITHIN THIRTY (30) DAYS FOLLOWING SELLER'S WRITTEN DEMAND THEREFOR, SHALL TURN OVER ALL REPORTS AND PLANS IN THE BUYER'S ACTUAL OR CONSTRUCTIVE POSSESSION THAT HAVE BEEN PREPARED BY AND FOR BUYER RELATED TO THE PROJECT AND THE PROPERTY (WITH THE EXCEPTION OF BUYER'S INTELLECTUAL PROPERTY, CONFIDENTIAL FINANCIAL INFORMATION, AND ANY INFORMATION SUBJECT TO LEGAL PRIVILEGE) (THE "**MATERIALS.**") THE BUYER'S ENRA DEPOSITS, AND MATERIALS SHALL SERVE AS LIQUIDATED DAMAGES TO THE SELLER FOR A DEFAULT SPECIFIED IN SECTION 7.2.1.1(a). THE VALUE OF THE BUYER'S ENRA DEPOSITS AND MATERIALS CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES THAT THE SELLER WOULD INCUR IN THE EVENT OF A CLOSING DEFAULT. RETENTION OF THE BUYER'S ENRA DEPOSITS AND MATERIALS SHALL BE THE SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT OF A DEFAULT A DEFAULT SPECIFIED IN SECTION 7.2.1.1(a), AND THE SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE LIQUIDATED DAMAGES PROVIDED FOR HEREIN IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO THE SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SELLER WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. BY PLACING ITS INITIALS BELOW, BUYER AND SELLER SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT EACH PARTY WAS REPRESENTED

BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS:

SELLER

BUYER

7.2.3 Acceptance of Service of Process. In the event that any legal action is commenced by Buyer against Seller, service of process on Seller shall be made by personal service upon the City Manager at the address provided in Section 13.8 or in such other manner as may be provided by law. In the event that any legal action is commenced by Seller against Buyer, service of process on Buyer shall be made by personal service upon Eric Tao,, Buyer's registered agent for service of process in California, at 500 Sansome Street, Suite 750, San Francisco, CA 94111 or in such other manner as may be provided by law.

7.3 Termination. In addition to termination upon satisfaction of all material terms of this Agreement as evidenced by issuance of a Certificates of Completion as to each portion of the Project, this Agreement may be terminated by the Party for whom a condition is intended to benefit: (i) if there is an uncured Default, after notice from the Party not in default and expiration of all cure periods, (ii) if there is a failure of an express Buyer Condition Precedent or Seller Condition Precedent (which is not waived by the Party whom the condition benefits) by timely notice from the Party whom the condition benefits, (iii) a representation or warranty of a Party becomes untrue prior to Closing under Section 6.1 or 6.2 (which is not waived by the Party whom the condition benefits), (iv) upon mutual written consent of the Parties, each in its sole discretion. Upon termination, the Parties will also cooperate to record a notice of termination.

7.4 Force Majeure Delay. All obligations in this Agreement shall not be deemed to be in Default, all performance and other dates specified in those sections 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; litigation and arbitration, including court delays; legal challenges to this Agreement, legal challenges to the Project Approvals, or legal challenges to any other approval required from any public agency other than the City 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 demolition, grading, and/or 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, including but not limited to delays in the Countywide Oversight Board process (except that acts or failures to act of Seller shall not excuse performance by Seller); moratorium; any delay caused by required coordination with the City's Civic Campus Project or the City obtaining the Off-Site Real Property Interests, so long as the Buyer is acting diligently and in good faith; 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. Buyer'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 Buyer 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.

7.5 City Option to Repurchase, Reenter and Repossess Parcels B and C1.

7.5.1 As to Parcels B and C1, subject to notice and opportunity to cure under Section 7.1 and applicable Force Majeure Delay under Section **Error! Reference source not found.**7.4, City shall have the additional right, at its sole option, to repurchase, reenter and take possession of either Parcel B1 or Parcel C if after conveyance of title to the Property and prior to Commencement of Construction on Parcels C1 and B, as part of Phases I or II respectively, as set for in the Schedule of Performance, Developer shall fail to Commence Construction on Parcels C1 or B as part of either Phase 1 or Phase II of the Project prior to the date and time required in Schedule of Performance.

7.5.2 Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(a) Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

(b) Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

7.5.3 To exercise its right to repurchase, reenter and take possession with respect to either Parcel C1 or B, City shall pay to Developer in cash an amount equal to:

(a) The Purchase Price paid by Developer for either of Parcel C1 or B, whichever parcel is repurchased.

(b) The total amount of any mortgages, deeds of trust or other liens encumbering the specific parcel at the time of the repurchase, reentry and repossession.

In order to exercise such purchase option, City shall give Developer Notice of such exercise and Developer shall, within sixty (60) days after Developer's receipt of such Notice, provide City with a detailed accounting of all of Developer's costs incurred as provided above. If City elects, in its sole discretion to repurchase either or both parcels, City, within thirty (30) days thereafter, shall pay to Developer in cash all sums owing pursuant to this Section 7.5, if any, and Developer shall thereupon execute and deliver to City a grant deed transferring to City all of Developer's interest in the Property (or applicable portion thereof).

City's rights under this Section 7.5 shall terminate as to each Parcel C1 or B upon Commencement of Construction by Developer on each of Parcels C1 and B respectively.

8. BROKERS. Seller represents that no real estate broker has been retained by Seller in the sale of the Property or the negotiation of this Agreement. Buyer represents that no real estate broker has been retained by Buyer in the procurement of the Property or negotiation of this Agreement. Buyer and Seller shall indemnify, hold harmless and defend the other Party from any and all claims, actions and liability for any breach of the preceding sentence, and any commission, finder's fee, or similar charges arising out the other Party's conduct.

9. ASSIGNMENT. Until issuance of Certificate of Completion for the Project on the Property (or applicable portion thereof), neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement, except for Buyer 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 Development Agreement in accordance with Section 8.1 of the Development Agreement. If Buyer proposes an assignment in relation to the entire Property or Parcels B and/or C1 separately (each a "**Property Transfer**"), Buyer will seek Seller's prior written consent to such Property Transfer, which consent will not be unreasonably withheld or delayed. Seller 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 Seller'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 Buyer to the City Council. Prior to any Property Transfer, the Buyer 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 Seller consent under this Section 9 (each a "**Buyer 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 Buyer (except that Affordable Property Transfer to an Affiliate of Buyer shall not be a Buyer 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 Buyer 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 9, “**Affiliate of Buyer**” means an entity or person that is directly or indirectly controlling, controlled by, or under common control with Buyer. 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. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement unless a release is provided in the form of assignment and assumption agreement approved by the reviewing Party.

10. ENVIRONMENTAL INDEMNITY. Effective upon Close of Escrow, and subject to Section 3.6, to the fullest extent allowed by law, Buyer agrees to unconditionally and fully indemnify, protect, defend (with counsel satisfactory to Buyer in Buyer’s sole discretion), and hold Seller and the City, and their respective elected and appointed officers, officials, employees, and agents, (“**Seller Indemnified Parties**”) harmless from and against any and all claims (including without limitation third party claims for personal injury, real or personal property damage, or damages to natural resources), actions, administrative proceedings (including without limitation both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs (including without limitation any and all costs relating to investigation, assessment, analysis or clean-up of the Property), liabilities (including without limitation sums paid in settlements of claims), interest, or losses, including reasonable attorneys’ and paralegals’ fees and expenses (including without limitation any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), together with all other costs and expenses of any kind or nature (collectively, the “**Claims**”) that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release, of any Hazardous Materials in, on or under the Property or to the extent emanating from the Property, in or into the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under or within the Property, or any portion thereof that are existing as of the Close of Escrow or are caused to exist during the period of ownership of the Property by Buyer, except those Costs that arise solely as a result of actions by Seller, the City (including their consultants and contractors) or Seller Indemnified Parties. Upon receipt of any Claim, the Seller Indemnified Parties shall promptly notify and tender such Claim to the Buyer. Any failure to timely tender such Claim to Buyer to allow Buyer to defend such Claim shall be deemed a waiver of such Seller Indemnified Party’s rights under this Section 10. Buyer shall resolve such Claim in its sole and absolute discretion so long as the Seller Indemnified

Party is not subject to any costs or liability. The indemnification provided pursuant to this Section shall specifically apply to and include claims or actions brought by or on behalf of employees of Buyer or any of its predecessors in interest and Buyer hereby expressly waives any immunity to which Buyer may otherwise be entitled under any industrial or worker's compensation laws. The indemnification provided pursuant to this Section shall include, without limitation, all loss or damage sustained by the Seller due to any Hazardous Materials: (a) that are present or suspected by a governmental agency having jurisdiction to be present in the Property or in the air, soil, soil gas, groundwater, or surface water at, on, about, above, under, or within the Property (or any portion thereof) or to have emanated from the Property, or (b) to the extent emanating from the Property that migrate, flow, percolate, diffuse, or in any way move onto, into, or under the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under, or within the Property (or any portion thereof) after the date of this Agreement as a result of Seller's activities on the Property prior to Close of Escrow. The provisions of this Section 10 shall survive the termination of this Agreement and the Close of Escrow. If Buyer purchases an environmental pollution legal liability policy for the Property, the policy shall include the City and Agency as additional insureds.

11. RELEASE BY BUYER. Effective upon the Close of Escrow, Buyer waives, releases, remises, acquits and forever discharges Seller and the City, and its officers, directors, board members, managers, employees and agents, and any other person acting on behalf of Seller from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer now has or which may arise in the future on account of or in any way arising from or in connection with the physical condition of the Property or any law or regulation applicable thereto including, without limiting the generality of the foregoing, any federal, state or local law, ordinance or regulation pertaining to Hazardous Materials. This Section 11 shall not apply to the City for any portion of the Property that is, after Closing, dedicated for public use (e.g. public sidewalks) and is under the direct management and maintenance of the City. This Section 11 shall survive the termination of this Agreement and the Close of Escrow.

BUYER ACKNOWLEDGES THAT BUYER IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, BUYER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Buyer's initials: _____

12. HAZARDOUS MATERIALS; DEFINITIONS.

12.1 Hazardous Materials. As used in this Agreement, "**Hazardous Materials**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below)

as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, infectious waste”, toxic substance”, toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “Hazardous Materials” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

12.2 Environmental Laws. As used in this Agreement, “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

13. MISCELLANEOUS.

13.1 Attorneys’ Fees. If any Party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys’ fees and costs. In any legal proceeding, the “prevailing party” shall mean the Party determined by the court to most nearly prevail and not necessarily the Party in whose favor a judgment is rendered.

13.2 Interpretation. This Agreement has been negotiated at arm’s length and each Party has been represented by independent legal counsel in this transaction and this Agreement has been

reviewed and revised by counsel to each of the Parties. Accordingly, each Party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting Party.

13.3 Survival. All indemnities, covenants, representations and warranties contained in Section 5.6, 6.1, Section 6.2, Section 10, and Section 11 of this Agreement shall survive Close of Escrow as expressly provided in each such section.

13.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

13.5 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

13.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof any cannot be amended or modified except by a written instrument executed and delivered by the Parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any Party is relying upon in entering this Agreement that are not fully expressed herein. In the event that the Countywide Oversight Board approves a Purchase Price different from the Purchase Price set forth in Section 2.2 and the Buyer, in its sole and absolute discretion, agrees to the revised Purchase Price, the City Manager may, on behalf of the City and Successor Agency, approve and execute an amendment to this Agreement to incorporate the Purchase Price approved by the San Mateo Countywide Oversight Board.

13.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

13.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either Party desires or is required to give to the other Party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the Party's address as set forth below:

If to Seller, 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 Buyer, 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

If to Escrow Holder: First American Title Insurance Company
333 W Santa Clara St Ste 220,
San Jose, CA 95113
Attn: Linda Tugade, Senior Escrow Officer
Tel: (408) 579-8340
Fax: (714) 913-6757
Email: ltugade@firstam.com

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any Party may change its address by notice to the other Party. Each Party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

13.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

13.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

13.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a Party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a Party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

13.12 Cooperation and Further Assurances. Each Party agrees to cooperate with the other in this transaction and, in that regard, shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

13.13 Waivers. Any waiver by any Party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any Party. Consent by any Party to any act or omission by another Party shall not be construed to be consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

13.14 Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

13.15 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed, or delivered, as of the Effective Date.

13.16 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

13.17 Access to Property. Prior to the Closing, Seller shall cooperate to enable representatives of Buyer to obtain the right of access to all portions of the Property for the purposes of implementing this Agreement. Buyer agrees to provide written notice to Seller at least twenty four (24) hours prior to undertaking any studies or work upon the Property. Buyer shall indemnify, defend, protect and hold Seller and Seller Parties harmless from any Claims arising out of the acts, omissions, negligence or willful misconduct of Buyer or its employees, agents, contractors, subcontractors or representatives (each a “**Buyer Party**” and, collectively, the “**Buyer Parties**”) in connection with such studies and investigations, except for Claims arising from or related to any pre-existing condition on or of the Property or Claims to the extent caused by the active negligence or willful misconduct of Seller or its employees, agents, contractors or representatives. In addition, in the event Buyer or any Buyer Party causes any damage to any portion of the Property, Buyer shall promptly restore the Property as nearly as possible to the physical condition existing immediately prior to Buyer’s entry onto the Property.

13.18 Memorandum of Agreement. A Memorandum of Agreement in substantially the form of Exhibit D attached hereto and incorporated herein by this reference shall be executed and recorded against the Property immediately following recordation of the Grant Deed.

13.19 Relationship Between Seller and Buyer. It is hereby acknowledged that the relationship between Seller and Buyer is not that of a partnership or joint venture and that Seller and Buyer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the exhibits hereto, Seller shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project.

13.20 Seller Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by Seller, the City Manager or his or her designee is authorized to act on behalf of Seller.

13.21 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.

13.22 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 Buyer 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 Article 9, applicable law shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

13.23 Certificate of Completion. Promptly after completing the Project in accordance with those provisions of this Agreement that relate solely to the obligations of Developer to construct the Project (including the dates for beginning and completion thereof), upon the Developer's written request that the City issue a Certificate of Completion, the City will provide a Certificate of Completion within thirty (30) days of such a request if the Developer has met the requirements for such issuance (the "Certificate of Completion"). If the Developer requests issuance of a Certificate of Completion, but the City refuses, then the City shall provide the Developer with a written explanation of its refusal within ten (10) days of the Developer's request. The Certificate of Completion will be the conclusive determination that those covenants in this Agreement with respect to the obligations of the Developer to construct the Project and the dates for the beginning and completion thereof have been met. The Certificate of Completion shall be in such form as will enable such certificate to be recorded in the Official Records. The Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of the Developer to: (a) any holder of a Security Financing Interest; (b) pay prevailing wages; or (c) comply with the Accessibility Requirements. The Certificate of Completion may not be deemed a notice of completion under the California Civil Code.

13.24 Effective Date. This Agreement shall be deemed effective upon execution by the Parties.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

SELLER:

CITY OF SOUTH SAN FRANCISCO

By: _____
Mike Futrell
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Sky Woodruff
City Attorney

BUYER:

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

By: _____

Name:

Title:

LIST OF EXHIBITS

Exhibit A	Legal Description
Exhibit B	Form of Grant Deed
Exhibit C	Schedule of Performance
Exhibit D	Form of Memorandum of Agreement
Exhibit E	Form of Development Agreement
Exhibit F	Form of Affordable Housing Agreement (BRIDGE)
Exhibit G	Form of Affordable Housing (BRIDGE) Assignment & Assumption Agreement

EXHIBIT A
LEGAL DESCRIPTION

[Insert]

EXHIBIT B

FORM OF GRANT DEED

Recording Requested by

and when Recorded, return to:

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

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, the City of South San Francisco, a municipal corporation (the “**Grantor**”) hereby grants to SSF PUC Housing Partners, LLC (the “**Grantee**”) all that real property located in the City of South San Francisco, County of San Mateo, State of California at _____, designated as San Mateo County Assessor’s Parcel Nos. _____ and more particularly described in Exhibit A attached hereto and incorporated in this grant deed (“**Grant Deed**”) by this reference.

1. Development Agreement. The Property is conveyed subject to the LRPMP and that certain Development Agreement dated as of _____, entered into by and between Grantee and the Grantor, acting to carry out the LRPMP (the “**Development Agreement**”).

2. Use Restrictions. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used and developed solely for purposes consistent with the requirements of the City of South San Francisco General Plan, as it presently exists or may be amended.

3. Nondiscrimination. Grantee shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of any person . Grantee covenants for itself and all persons claiming under or through it, and this Grant Deed is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Grantee or any person claiming under or through Grantee establish or permit any such practice or practices of discrimination or

segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees in, of, or for the Property or part thereof.

All deeds, leases or contracts made or entered into by Grantee, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) In Deeds, the following language shall appear:

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

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

(b) In Leases, the following language shall appear:

“(1) The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub lessees, subtenants, or vendees in the property herein leased.

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

(c) In Contracts, the following language shall appear:

“There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sub lessees or vendees of the land.”

4. Term of Restrictions. The covenants contained in Section 1 and Section 2 regarding use of the Property shall remain in effect until the date which is the expiration date of the Development Agreement. The covenants against discrimination contained in Sections 3 shall remain in effect in perpetuity.

5. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed 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 permitted by the Development Agreement; provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

6. Binding On Successors. The covenants contained in Sections 2 and 3 of this Grant Deed, without regard to technical or legal classification or designation specified in this Grant Deed or otherwise, shall to the fullest extent permitted by law and equity, be binding upon Grantee and any successor in interest to the Property or any part thereof, for the benefit of Grantor, and its successors and assigns, for such period of time of applicable ownership, and such covenants shall run in favor of and be enforceable by the Grantor and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and its successors and assigns shall have the right to exercise all rights and remedies available under law or in equity to enforce the curing of such breach.

7. Enforcement. The Grantor shall have the right to institute such actions or proceedings as it may deem desirable to enforce the provisions set forth herein. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights hereunder shall not operate as a waiver of or limitation on such rights, nor operate to deprive Grantor of such rights, nor shall any waiver made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of Grantor's rights with respect to any other default by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived.

8. Amendment. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed. For purposes of this Section, successors and assigns of

the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and Improvements.

9. Conflict. In the event there is a conflict between the provisions of this Grant Deed and the Agreement, it is the intent of the parties that the Agreement shall control.

10. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of _____, 201__.

GRANTOR

CITY OF SOUTH SAN FRANCISCO

By: _____
Mike Futrell
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

GRANTEE:

FORM – DO NOT SIGN

SSF PUC Housing Partners, LLC
a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT A to Grant Deed

(Attach legal description)

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

State of California)
) ss.
County of San Mateo)

On _____, 20____ before me, _____, a Notary Public, in and for said State and County, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

NOTARY PUBLIC

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

State of California)
) ss.
County of San Mateo)

On _____, 20____ before me, _____, a Notary Public, in and for said State and County, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

NOTARY PUBLIC

EXHIBIT C

SCHEDULE OF PERFORMANCE

NOTE: Capitalized terms used below shall have the meaning ascribed to such terms in the Purchase and Sale Agreement (“Agreement”) to which this Exhibit C is attached. All of the dates and deadlines described herein shall be subject to extension by the City Manager pursuant to Section 5.6 of the Agreement and/or “Force Majeure” in accordance with Section 7.4 of the Agreement. The provisions of the Schedule of Performance are intended as a convenient guideline for the Parties and are not intended to supersede or amend the referenced operative sections listed therein. In the event of any conflict between this Schedule of Performance and the Agreement, the Agreement shall control.

#	MILESTONE	TIMING REQUIREMENT
Pre-Escrow		
1	OB Approval Date (§1.2)	Prior to Outside OB Approval Date.
2	Identify Escrow Holder and Opening of Escrow (§3.2)	Within 10 days after the OB Approval Date.
Pre-Closing		
3	Preliminary Title Report issued by Escrow Holder (§4.1)	Within 15 days of Opening of Escrow.
4	Buyer review of Preliminary Title Report (§4.1)	Within 30 days of receipt of Preliminary Title Report.
5	Buyer and City to provide regular updates on satisfaction and/or waiver of conditions precedent to Closing.	No less than monthly or more often as the circumstances warrant.
6	Satisfaction or waiver of conditions precedent to Closing (§5.2 and §5.3)	Prior to Closing.
7	Closing (§5.1)	Within 30 days after satisfaction or waiver of all conditions precedent, but no later than prior to March 31, 2022 (“ Outside Closing Date ”).
Post-Closing		
8	Buyer provides City regular updates on Project construction.	No less than quarterly or more often as the circumstances warrant.
9	Buyer Commences Construction of Building C1 and Building C2, and related Adjacent Areas as defined in the Project Approvals (“ Phase I ”) For the purposes of this Schedule of Performance, “ Commences Construction ” means that the following have occurred as to the Project: (i) the City has issued the Buyer a demolition permit and/or a grading permit, (ii) the Buyer has signed contracts with a general contractor for the demolition and/or grading	In sufficient time to timely Substantially Complete Phase I pursuant to this Schedule of Performance, but within one (1) year after Closing.

	work, and (iii) the Buyer has given the general contractor a notice to proceed and has caused the general contractor to physically commence excavation and/or grading of the Property.	
10	<p>Buyer Substantially Completes Construction of Phase I.</p> <p>For the purposes of this Schedule of Performance, “Substantial Completion” shall be deemed to have occurred when construction has been completed (subject only to punch list items) such that the Project (or applicable portion thereof) is ready for occupancy and the life safety systems, as applicable, have been installed and are functional.</p>	Subject to diligence pursuit after Commencement of Construction; but in no event later than five (5) years after Closing.
11	Buyer Commences Construction of Oak Avenue Phase 1 Extension and shall make the Oak Avenue Phase II Extension Payment required under Section 3.4(a) of the Development Agreement.	Within one hundred and eighty (180) days from written notice to proceed from the City with respect to the Civic Campus Project; provided however, notice shall not be provided earlier than 180 days after Commencement of Construction of Phase I and no later than necessary as required to provide access for Phase II (defined below).
12	Buyer Completes Construction of Oak Avenue Phase 1 Extension. For the purposes of this Schedule of Performance “ Completes Construction of Oak Avenue Phase 1 Extension ” shall mean when the Oak Avenue Phase 1 Extension has been complete and accepted for dedication by the City.	Within eighteen (18) months from Commencement of Construction of Oak Avenue Phase 1 Extension.
13	Buyer Commences Construction of the Building B and related Adjacent Areas as defined in the Project Approvals (“ Phase II ”).	In sufficient time to timely Substantially Complete Phase II pursuant to this Schedule of Performance, but in no event later than six (6) years after Closing.
14	Buyer Substantially Completes Construction of Phase II.	Subject to diligence pursuit after Commencement of Construction of Phase II; but in no event later than eight (8) years after Close of Escrow.
15	City shall provide the Certificate of Completion to Buyer (§13.23)	Within thirty (30) days following completion of the each applicable portion of the Project and Buyer’s written request therefor.

EXHIBIT D

FORM OF MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of South San Francisco
P.O. Box 711
South San Francisco, CA 94083

(Space Above This Line Reserved For Recorder's Use)

This instrument is exempt from recording fees pursuant to Government Code section 27383.

NOTICE OF AGREEMENT

This Notice of Agreement (this "Notice"), dated as of _____, 201__, is entered into by and between the City of South San Francisco, a municipal corporation ("**Seller**" or "**City**") and SSF PUC Housing Partners, LLC, ("**Buyer**").

A. On _____, 2019, Seller and Buyer entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions ("**PSA**") with respect to real property owned by Seller, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("**Property**").

B. The PSA sets forth certain agreements made by the Parties with respect to their the Property.

C. This Notice is prepared for the purpose of recordation only, and it in no way modifies the provisions of the PSA.

D. This Notice shall extend to and be binding upon the Parties hereto and their legal representatives, heirs, successors, and assigns.

E. This Notice may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, Seller and Buyer have executed this Notice as of the date first written above.

SELLER:

CITY OF SOUTH SAN FRANCISCO

By: _____
Mike Futrell
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

FORM – DO NOT SIGN

BUYER:

SSF Housing Partners, LLC
a Delaware limited liability company

By: _____
Name:
Title:

FORM – DO NOT SIGN

[INSERT NOTARY FORMS IN EXECUTION COPY]

**EXHIBIT A
TO
NOTICE OF AGREEMENT**

LEGAL DESCRIPTION OF PROPERTY

REAL PROPERTY IN THE CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

[Insert]

EXHIBIT E

FORM OF DEVELOPMENT AGREEMENT

[INSERT]

EXHIBIT F

FORM OF AFFORDABLE HOUSING AGREEMENT (BRIDGE)

[INSERT]

EXHIBIT G

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

[INSERT]