

THIS PRINT COVERS CALENDAR ITEM NO.: 11B

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Streets

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute a Lease Development and Disposition Agreement (LDDA) with Plenary Potrero Housing LLC, for the development of an affordable housing project as part of the SFMTA Potrero Yard Modernization Project.

SUMMARY:

- The SFMTA and Potrero Neighborhood Collective, LLC (Lead Developer) are parties to a Predevelopment Agreement dated November 2, 2022, for certain predevelopment work needed for the Potrero Yard Modernization Project (Project).
- The Project involves joint development of a modern bus storage and maintenance facility (Infrastructure Facility) and, if feasible, an affordable housing project that is currently designed with 104 (103 units for households with incomes up to eighty percent (80%) of area median income (as calculated by the Mayor’s Office of Housing and Community Development), and one (1) manager’s unit), and approximately 2,800 sf of ground-level commercial space (Housing Project).
- Initial predevelopment work for the Project is completed and the Lead Developer and SFMTA staff have mutually agreed to a form of project agreement (Project Agreement) for the delivery of the Infrastructure Facility and a form of Lease Development and Disposition Agreement (LDDA) for additional Housing Project predevelopment work, including the negotiation of the form of long-term ground lease for the construction and operation of the Housing Project (Ground Lease) that will be subject to the approval of the SFMTA Board of Directors and the Board of Supervisors.
- The initial term of the LDDA starts upon execution (Commencement Date) and terminates on the second anniversary (Outside Date) of the substantial completion of the Infrastructure Facility (currently anticipated to be June of 2030), subject to any earlier termination under the terms of the LDDA. The term is subject to up to three extension terms (up to two years each) at the sole discretion of the SFMTA and subject to any approvals required from the SFMTA Board of Directors and the Board of Supervisors.

ENCLOSURES:

1. SFMTAB Resolution
2. Lease Development and Disposition Agreement

APPROVALS:

DIRECTOR



SECRETARY



DATE

February 26, 2026

February 26, 2026

ASSIGNED SFMTAB CALENDAR DATE: March 3, 2026

PURPOSE

Authorizing the Director of Transportation to execute a Lease Development and Disposition Agreement (LDDA) with Plenary Potrero Housing LLC, for the development of an affordable housing project as part of the SFMTA Potrero Yard Modernization Project.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action is consistent with the following SFMTA Strategic Plan Goals:

- Goal 1: Identify and reduce disproportionate outcomes and resolve past harm towards marginalized communities.
- Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking and bicycling.
- Goal 10: Position the agency for financial success.

This action is consistent the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
7. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

Introduction

The SFMTA's Building Progress Program (Building Progress) is a multi-year initiative to repair, renovate, and modernize the SFMTA's aging facilities to improve the overall transportation service delivery system in San Francisco. Building Progress's first major project is the Potrero Yard Modernization Project (Project), a joint development located at the Potrero Yard's current 4.4-acre site bounded by Bryant, 17th, Hampshire, and Mariposa streets (Project Site).

The SFMTA plans to develop the Project through joint development, as it advances Building Progress projects. Joint development includes a developer using SFMTA property for non-SFMTA uses. In February 2025, the SFMTA Board of Directors adopted its first ever Joint Development Program Goals and Policy (Goals and Policy) (Resolution No. 250204-010). The Policy provides a framework for clear decision-making, and it includes a portfolio of properties

that have the potential to advance the Goals through future joint development projects. Potrero Yard is a large property in the portfolio.

Consistent with the Goals and Policy, the Project includes two primary components: (1) a state-of-the-art bus maintenance and storage facility (Infrastructure Facility), and (2) if financially feasible, an affordable housing project with limited ground floor commercial space (Housing Project).

Initial predevelopment work for the Project was completed by Potrero Neighborhood Collective, LLC (Lead Developer), a developer selected through a full and open competitive procurement process for the Project. The Lead Developer, solely owned and managed by Plenary Americas US Holdings Inc., is a leading long-term investor, developer, and manager of public infrastructure projects across the United States and Canada.

The predevelopment work included the negotiation of the form of Project Agreement for the delivery of the Infrastructure Facility and the form of Lease Development and Disposition Agreement (LDDA) for continued predevelopment work required for the Housing Project. If the Housing Project predevelopment work is successfully completed, SFMTA staff will seek approval of the ground lease for the construction and operation of the Housing Project from the SFMTA Board of Directors and the Board of Supervisors.

Project Background

Originally built in 1915, the existing Potrero Yard is situated on the Project Site. It is the first site scheduled for major modernization under Building Progress due to the age and seismic hazard rating of the current facility, and because rapidly changing innovations in bus fleet technology make it obsolete. The existing two-story building originally operated as a purpose-built streetcar facility housing 100 streetcars. It has since been expanded to house and maintain approximately 158 40-foot and 60-foot modern electric trolley buses, although it remains functionally obsolete and is operating beyond crush capacity.

In addition to rebuilding the operations and maintenance facility, the Project also advances the Goals and Policy. The SFMTA is facilitating the Housing Project at the Project Site, if feasible, which may begin construction only after construction of the Infrastructure Facility, unless the Infrastructure Facility contractor also builds the Housing Project. The Housing Project is currently designed to have 104 housing units and will be located adjacent to the Infrastructure Facility on a separate parcel to be created on the Project Site along Bryant Street (the Housing Parcel). The final unit count, which could be more or less than 104, will be determined based on project feasibility, SFMTA review and approval, and applicable regulatory agency approvals.

With approval of the LDDA, the SFMTA will have its first project in its adopted Joint Development Program Portfolio, which was created for dispositions governed by the California's Surplus Land Act under (or Act). The Act governs the disposition of "surplus land," which it defines as land owned by a local agency, including a city and county like San Francisco, that is determined to be no longer necessary for the agency's use. The Act is codified in California Government Code sections 54220 et seq. To comply with the Act's requirements for commercial development on "surplus land" to generate revenue for transportation purposes,

the Goals and Policy require that at least 50 percent of the gross acreage of properties in the portfolio be designated for residential purposes, and at least 25 percent of those residential units must be used for affordable housing. The SFMTA will be able to count any lease of the Housing Parcel for affordable housing towards meeting this 25 percent requirement.

Predevelopment Agreement

The SFMTA and the Lead Developer entered into a Predevelopment Agreement dated November 2, 2022, as amended, under which the Lead Developer had to perform certain predevelopment work for the Project required to achieve substantial completion of the Infrastructure Facility by November 30, 2030.

This predevelopment work included preparing and obtaining design documents, due diligence materials, and other development materials and analyses, developing the commercial and financing structure for the Project, procuring contracts for the design and construction of the Infrastructure Facility, and negotiating with the SFMTA separate agreements to deliver the Project. These agreements included a housing agreement for a Housing Project and a design-build-finance agreement (Project Agreement) for the Infrastructure Facility.

The Predevelopment Agreement required the Lead Developer to perform the predevelopment work at its own expense, but the Lead Developer was entitled to receive a \$4,350,000 continuation payment if Developer secured the entitlements needed to construct and operate the Project and the Board of Supervisors approved that payment. In addition, the Lead Developer is entitled to a termination payment for its qualified predevelopment costs up to \$16,046,566 if the Predevelopment Agreement expires or terminates for any reason other than (i) the execution of the Project Agreement and approval of the LDDA or (ii) Lead Developer's default under the Predevelopment Agreement. The Lead Developer is not in default under the Predevelopment Agreement, and the Predevelopment Agreement term expires on March 31, 2026.

If the Predevelopment Agreement expires or is terminated, the Lead Developer must transfer all prepared predevelopment materials and assign usage rights to the SFMTA. SFMTA staff have determined that any termination payment made to the Lead Developer will be less than the total value of work materials the Lead Developer will be required to provide to the SFMTA. To date, SFMTA staff and the Lead Developer have collaborated extensively to negotiate and develop the Project's transaction documents, including the Project Agreement and LDDA, to transition the Infrastructure Facility from the predevelopment phase into the delivery phase and continue certain Housing Project predevelopment work.

Lease Development and Disposition Agreement

The LDDA would be between the City, operating by and through the SFMTA, and Plenary Potrero Housing LLC (PPH), a California limited liability company that is an affiliate of the Lead Developer created for the purpose of developing the Housing Project. The LDDA provides the terms and conditions for continued Housing Project predevelopment work at the sole cost of PPH through, among other actions, (1) the subdivision of the Project Site into two legal parcels, comprised of a parcel for the Infrastructure Facility and a parcel for the Housing Project

(Housing Parcel), (2) the development of design and construction documents, (3) the pursuit of financing, including an allocation of low income housing tax credits, and construction permits, (4) selecting the construction contractor, and (5) the negotiation of a ground lease for the construction, maintenance, and operation of the Housing Project on the Housing Parcel (Ground Lease).

If the predevelopment work is successfully completed, the Ground Lease is approved by the SFMTA Board of Directors and the Board of Supervisors, and the conditions to executing the Ground Lease in the LDDA are satisfied or waived within two (2) years of substantial completion of the Infrastructure Facility (Outside Date), the parties would enter into the Ground Lease on the term and conditions of the LDDA. Substantial completion of the Infrastructure Facility is currently expected to occur in June of 2030. The Outside Date can be extended with up to three extension terms (up to two years each) at the city's sole discretion. Any extension that extends the LDDA term beyond 10 years shall also require the approval of the SFMTA Board and Board of Supervisors.

The SFMTA maintains the right to terminate the LDDA if it determines the Housing Project will damage the Infrastructure Facility or interfere with its operations before state funding is awarded for the Housing Project, if PPH fails to timely meet certain performance milestones, or if PPH fails to timely cure a default under the LDDA. The SFMTA also maintains the right to require the Housing Project is designed to avoid damage to the Infrastructure Facility or interference with its operations.

Mission Economic Development Agency, a California nonprofit public benefit corporation (MEDA), and Tabernacle Community Development Corporation, a California nonprofit public benefit corporation (Tabernacle), were Lead Developer's affordable housing team members and performed initial Housing Project predevelopment work during the PDA term. The LDDA allows the PPH to assign its right to lease the Housing Parcel for the Housing Project to PY Bryant Street Housing, LP, a California limited partnership that is controlled by MEDA and Tabernacle, on the terms specified in the LDDA. If City and PPH execute the LDDA, PPH intends to enter into a Dropdown Lease Development and Disposition Agreement to conditionally assign PPH's rights regarding the Ground Lease under the LDDA to PY Bryant Street Housing, LP, and provide for the performance of certain Housing Project predevelopment work.

Form of Ground Lease

During the LDDA term, the parties will negotiate the form of Ground Lease, which will substantially be in the form used by Mayor's Office of Housing and Community Development for affordable housing projects developed on City property. The LDDA also requires that Ground Lease include the following terms, among others, unless otherwise mutually agreed to by the Parties:

- Term: The 75-year term of the Ground Lease shall commence on the execution of the Ground Lease, provided that the tenant shall have an option to extend the term for an additional 24 years.
- Construction and Operation of the Project. The tenant shall be responsible, at its sole cost, for construction, operation, and maintenance of the Housing Project during the Ground Lease term.

- Taxes and Assessments: The tenant shall be responsible for the payment of any and all property taxes and assessments levied on the Housing Parcel.
- Project Use. The Housing Parcel shall be used only for affordable housing during the Ground Lease term, with maximum average rent and income restriction categories at no more than eighty percent (80%) of AMI, ground-floor commercial uses, and ancillary uses, including community-serving uses.
- Lease of Commercial Spaces. Unless otherwise mutually approved by the Parties, the Housing Project's two commercial space units will be leased to organizations based in the Mission, Potrero, and/or Bayview-Hunters Point and small businesses rooted in keeping the arts and culture of the neighborhood, with the leases having up to 55-year term and rent at \$2/sf triple net with escalation.
- Rent: Fixed Annual Base Rent and Residual Rent, if any. See Funding Impact below.
- Acknowledgement of Muni Operations. The Ground Lease will include the tenant's (i) acknowledgement that the Infrastructure Facility will be used for Muni Operations and other SFMTA uses during the term that can create noise, parking congestion, vehicular and rail traffic, odors, dust, dirt and visual obstructions, and (ii) waiver to the maximum extent authorized by law, of any and all rights to commence or maintain a lawsuit for common law or statutory nuisance, inverse condemnation or other legal action, based upon interference with the comfortable enjoyment of life or property or similar claims with respect to the Housing Parcel, arising out of the existence of the Muni Operations or other SFMTA uses of the Infrastructure Facility or Infrastructure Facility Parcel or any expansion, modification or addition to such uses or the Infrastructure Facility.

STAKEHOLDER ENGAGEMENT

Since December 2017, the Project team has led an extensive, inclusive, and transparent stakeholder engagement process to develop and design the new Potrero Yard. Community engagement has guided the Project through initial planning, the lead developer procurement process, and the launch of the city's first public-private partnership that produced the 100 percent schematic design we have today.

Feedback from stakeholders substantially informed the SFMTA's solicitation documents, including a public benefit vision for the Project. This document, titled Public Benefit Principles, was appended to the solicitation documents, and described the essential public benefit concepts that the proposers should incorporate, depicted them through examples, and allowed the proposers flexibility and interpretation to present how they would be achieved in their submitted proposals.

Stakeholders also provided significant feedback on the overall program for the Housing Component and the Design Guidelines. Since November 2022, the SFMTA and Potrero Neighborhood Collective, LLC (PNC) have worked with the community and other stakeholders to further develop project design, including through the Potrero Yard Neighborhood Working Group. Stakeholders were engaged on open decision points, such as the look and feel of the new building, ideas for the Project's community and commercial spaces, the streetscape on 17th Street, landscaping, and location of public art.

During the 2025 confidential final pricing phase, cost-cutting measures significantly reduced the Project's proposed housing component. This required a phase of outreach focused on this reduction. This community outreach started in September 2025 at a Potrero Yard Neighborhood Working Group meeting and was followed in quick succession by additional outreach events, held both in person in the Mission District and Potrero Hill and online. This phase included an event targeted toward community-based organizations, two community events (advertised online, in news media, and via mailers), and participation in the Potrero Hill Festival street fair. The Project team also communicated these changes through yard tours and attending online meetings with groups such as the Latino Task Force.

Bilingual English-Spanish communications have been part of the engagement from the start. Major outreach activities to educate the community about the Project and solicit feedback have included 20 community events and open houses, 50 public tours of Potrero Yard, 53 meetings of the Potrero Yard Neighborhood Working Group, and 50+ meetings and listening sessions with community organizations. The Project team has also participated in community-sponsored events, including Carnaval SF; District 9 Neighborhood Beautification Day; Fiesta de las Americas; Friends of Franklin Square Park Cleanups; KQED Fest; Phoenix Day; Potrero Hill Rhythm & Blues Festival; Sunday Streets - Valencia Street; and Transit Month.

In addition, the Project has been presented in a variety of public hearing settings to date, where formal public comment has been received and documented. Most recently this has included endorsement of the Form Project Agreement by the SFMTA Board of Directors (Dec. 3, 2024) and Board of Supervisors (Dec. 10, 2024); the CEQA certification and entitlements approvals, including the Recreation and Parks Commission (Dec. 21, 2023), the Planning Commission (Jan. 11, 2024), Board of Supervisors Land Use and Transportation Committee (Feb. 26, 2024), Board of Supervisors Budget and Finance Committee (Feb. 28, 2024) and the full Board of Supervisors (Mar. 5 and Mar. 12, 2024).

Paralleling the community outreach effort has been an extensive in-reach effort to frontline staff at Potrero Yard, including maintenance, operations, and administrative employees. Since November 2022, eight in-reach meetings were held to update and solicit input from frontline staff, in addition to involving leadership at the Potrero Yard in the design of interior spaces in the Infrastructure Facility.

ALTERNATIVES CONSIDERED

An alternative to approval of the LDDA is to disapprove or delay action. Delay or disapproval of the LDDA does not impact the separate approval and execution of the Project Agreement for the Infrastructure Facility. However, delay or disapproval of the LDDA might result in the loss of PPH, the affiliate for the Lead Developer, to continue the development of the Housing Project through its substantial completion, jeopardizing project delivery as intended and risking the lost potential of delivering much-needed affordable housing and neighborhood-serving space at the Project Site.

FUNDING IMPACT

PPH is responsible for financing the Housing Project, not the SFMTA. The cost to complete the Housing Project predevelopment work and to construct and operate the Housing Project is not yet determined and is subject to PPH's ability to obtain financing, outlined in the terms of the LDDA. The SFMTA will not incur any costs under the LDDA other than City staff time in performing City's obligations and exercising its rights under the LDDA.

Execution of the LDDA obligates PPH to pay a fee of one hundred dollars (\$100.00) as consideration for the City's execution of the LDDA. This fee in no way relates to any future Ground Lease rent payments.

The LDDA outlines a Ground Lease rent structure modeled on the Mayor's Office of Housing and Community Development affordable housing ground lease policy. Under this structure, the total Ground Lease rent is benchmarked at ten percent (10%) of the appraised land value of the Housing Parcel. In practice, this benchmark is comprised of:

- Fixed Annual Base Rent: A must-pay annual rent of \$15,000, paid by the tenant as an operating expense of the Housing Project.
- Residual Rent: A variable rent component that the tenant pays to the SFMTA only if the Housing Project generates surplus cash flow after covering all operating costs and debt service.

Residential rents will be restricted to households with incomes up to eighty percent (80%) of area median income (as calculated by the Mayor's Office of Housing and Community Development). Given these affordability requirements, the Housing Project is not expected to produce significant surplus cash flow. As a result, the SFMTA anticipates receiving the \$15,000 annual base rent on an ongoing basis, with minimal or no residual rent for many years, consistent with typical affordable housing feasibility.

ENVIRONMENTAL REVIEW

On January 11, 2024, the San Francisco Planning Commission certified the Potrero Yard Modernization Project Final Environmental Impact Report (FEIR) in Motion No. 21482 and adopted findings under CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code and a Mitigation Monitoring and Reporting Program (MMRP) in Motion No. 21483.

A Note to File (NTF) for the FEIR was completed on October 25, 2024. A second NTF for the FEIR was completed on February 4, 2025. Authorizing the Director of Transportation to execute the LDDA with Plenary Potrero Housing LLC, would not result in a direct or reasonably foreseeable indirect physical change to the environment beyond the scope analyzed in the FEIR and NTFs.

Copies of the CEQA determinations are on file with the Secretary to the SFMTA Board of Directors and are incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The LDDA does not require Board of Supervisors or other approvals. Board of Supervisors approval will be required for the execution of the Ground Lease.

The City Attorney's Office has reviewed the report.

RECOMMENDATION

Staff recommends authorizing the Director of Transportation to execute a Lease Development and Disposition Agreement (LDDA) with Plenary Potrero Housing LLC for the development of an affordable housing project as part of the SFMTA Potrero Yard Modernization Project.

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS**

RESOLUTION No. _____

WHEREAS, On November 1, 2022, the SFMTA Board of Directors adopted Resolution No. 221101-105, authorizing the Director of Transportation to execute the Predevelopment Agreement for the Potrero Yard Modernization Project (Project) with Potrero Neighborhood Collective LLC (Lead Developer), a Delaware limited liability company wholly owned by Plenary Americas US Holdings, Inc., a leading long-term investor, developer, and manager of public infrastructure, and the Predevelopment Agreement was fully executed on November 2, 2022; and,

WHEREAS, The Project involves the joint development of a modern bus storage and maintenance facility (Infrastructure Facility) and if feasible, an affordable housing project (Housing Project) that is currently designed to have approximately 104 units (103 units for households with incomes up to eighty percent (80%) of area median income, as calculated by the Mayor's Office of Housing and Community Development, and one manager's unit), and approximately 2,800 sf of ground-level commercial space at the current Potrero Yard site, comprised of approximately 4.4 acres and bounded by Bryant, 17th, Hampshire and Mariposa Streets (Project Site); and,

WHEREAS, The SFMTA plans to deliver the Infrastructure Facility through its Building Progress Program, and facilitate the Housing Project, if feasible, under the SFMTA's Joint Development Program; and,

WHEREAS, Under the Predevelopment Agreement, the Lead Developer was responsible for conducting predevelopment work and negotiating specific transaction documents with the SFMTA to deliver the Project, and the parties have negotiated the Infrastructure Facility Project Agreement (Project Agreement) for the Infrastructure Facility and a Lease Development and Disposition Agreement (LDDA) for the Housing Component; and,

WHEREAS, The LDDA would be between the City and Plenary Potrero Housing LLC (PPH), a California limited liability company that is an affiliate of the Lead Developer and created for the purpose of developing the Housing Project; and,

WHEREAS, Substantial completion of the Infrastructure Facility is anticipated to occur in June of 2030, and construction of the Housing Project will occur after that substantial completion unless the same contractor builds the Infrastructure Facility and the Housing Project, in which case construction of the Housing Project would begin after construction of the Infrastructure Facility; and,

WHEREAS, There is additional time for Housing Project predevelopment work, including design and construction documents, subdividing the Project Site to create a separate legal parcel for the Housing Project (Housing Parcel), procuring a contractor, pursuing low income housing tax credits and other financing, and negotiating the form of ground lease for the construction and operation of the Housing Project (Ground Lease); and,

WHEREAS, All Housing Project predevelopment work under the LDDA will be at the sole cost of PPH, and if it is successfully and timely completed, SFMTA staff anticipate submitting the Ground Lease for approval by the SFMTA Board of Directors and the Board of Supervisors before the second anniversary of the substantial completion of the Infrastructure Facility (Outside Date), with the SFMTA having the sole discretion to extend the Outside Date with up to three extension terms (each up to two years), subject to approval of the SFMTA Board of Directors and the Board of Supervisors for any extension term that would extend term of the LDDA beyond 10 years; and,

WHEREAS, On the execution of the LDDA, PPH intends to enter into a Dropdown Lease Development and Disposition Agreement with PY Bryant Street Housing, L.P., a California limited partnership controlled by Mission Economic Development Agency, a California nonprofit public benefit corporation, and Tabernacle Community Development Corporation, a California nonprofit public benefit corporation, to conditionally assign PPH's rights regarding the Ground Lease under the LDDA and provide for the performance of certain Housing Project predevelopment work; and,

WHEREAS, On January 11, 2024, the San Francisco Planning Commission certified the Potrero Yard Modernization Project Final Environmental Impact Report (FEIR) in Motion No. 21482 and adopted findings under CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code and a Mitigation Monitoring and Reporting Program (MMRP) in Motion No. 21483; and,

WHEREAS, A Note to File (NTF) for the FEIR was completed on October 25, 2024. A second NTF for the FEIR was completed on February 4, 2025. Authorizing the Director of Transportation to execute an LDDA with Plenary Potrero Housing, LLC, would not result in a direct or reasonably foreseeable indirect physical change to the environment beyond the scope analyzed in the FEIR and NTFs; and,

WHEREAS, Copies of the CEQA determinations are on file with the Secretary to the SFMTA Board of Directors and are incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute the LDDA if the Director of Transportation executes the Project Agreement; and, be it further

RESOLVED, That the Director of Transportation is authorized to enter into any amendments or other modifications to the LDDA that the Director of Transportation determines, in consultation with the City Attorney, are in the best interests of the SFMTA and do not materially increase the obligations or liabilities of the SFMTA, materially decrease the benefits to the SFMTA, or extend the LDDA term to more than 10 years, and to take all actions

reasonably necessary or prudent to perform the SFMTA's obligations and exercise its rights under the LDDA.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 3, 2026.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

LEASE DEVELOPMENT AND DISPOSITION AGREEMENT

by and between

THE CITY AND COUNTY OF SAN FRANCISCO,

acting by and through the

SAN FRANCISCO MUNICIPAL TRANSPORTATION AUTHORITY

and

PLENARY POTRERO HOUSING LLC,
a California limited liability company

Potrero Yard Modernization Project – Housing Project

(Portion of APN 3971-001)

_____, 2026

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LEASE DEVELOPMENT AND DISPOSITION AGREEMENT

Potrero Yard Modernization Project – Housing Project (Portion of APN 3971-001)

This Lease Development and Disposition Agreement (this “**Agreement**”) dated for references purposes as of _____, 2026, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (“**SFMTA**”), and PLENARY POTRERO HOUSING LLC, a California limited liability company (“**Original Developer**”), with reference to the following facts:

RECITALS

This Agreement is made with reference to the following facts and circumstances:

A. City, under the jurisdiction of the SFMTA, owns the real property commonly known as 2500 Mariposa Street in San Francisco, California, which is a 4.4-acre site comprised of Assessor’s Block No. 3971-001, bounded by Bryant Streets, 17th Street, Hampshire Street, and Mariposa Street, and fully described on the attached Exhibit A (the “**Project Site**”).

B. The Project Site is currently improved with a two-story structure used for electric trolley bus parking, operations, and maintenance services and an open trolley bus storage yard, which do not have the capacity to meet current needs, expected future needs, or modern safety and maintenance standards. City wishes to replace and expand the existing structure, as well as further the SFMTA’s Joint Development Program Goals and Policy to maximize revenue for transportation, create inclusive and well-connected communities (which includes using public lands to build affordable housing to the greatest extent possible), and build sustainable and resilient projects.

C. The SFMTA’s Potrero Yard Modernization Project (“**Project**”) includes the joint development and construction of the following at the Project Site: (i) a modern four-story bus storage and maintenance facility (“**Infrastructure Facility**”), and (ii) if feasible, an affordable housing project with related commercial space (“**Housing Project**”) adjacent to the Infrastructure Facility.

D. On August 21, 2020, City issued a Request for Qualifications (together with all its addenda, the “**RFQ**”) to invite interested parties to submit a statement of qualifications for the Project. Potrero Neighborhood Collective LLC, a Delaware limited liability company that is the affiliate of Developer (“**PNC**”), and two other RFQ respondents were the three most qualified respondents to the RFQ, and City invited those three respondents to respond to a Request for Proposals for the development of the Project, which was issued by City on April 9, 2021 (the “**Initial RFP**”). The Initial RFP and all addenda to the Initial RFP shall be collectively referred to in this Agreement as the “**RFP**”.

E. On December 30, 2021, PNC submitted a proposal to City in response to the RFP (the “**Original Proposal**”) to perform the Project predevelopment work pursuant to a predevelopment agreement as described in the RFP.

F. After City issued Addendum #30 to the RFP requesting proposal revisions from eligible proposers on May 26, 2022, PNC submitted its revised response to the RFP on July 20, 2022, which was clarified through the request for clarifications process set forth in the RFP.

G. On September 12, 2022, PNC was selected by City as the preferred respondent with the best-value proposal to the RFP, and PNC and City executed a Predevelopment Agreement dated as of November 2, 2022 (“**Original PDA**”) for the Project’s predevelopment phase. The Original PDA was authorized by SFMTA Board of Directors Resolution 221101-105, and amended by a First Amendment to Predevelopment Agreement dated as of May 29, 2024 (the “**First Amendment**”), a Second Amendment to Predevelopment Agreement dated as of October 1, 2024 (the “**Second Amendment**”), and a Third Amendment to Predevelopment Agreement dated as of July 31, 2025 (the “**Third Amendment**”). The “**PDA**” means the Original PDA as amended by the First Amendment, the Second Amendment, and the Third Amendment.

H. On January 11, 2024, by Motion No. 21482, the Planning Commission certified as adequate, accurate, and complete the Environmental Impact Report for the Project (“**Final EIR**”) pursuant to the California Environmental Quality Act (“**CEQA**”), the CEQA Guidelines (Cal. Code Reg. Sections 15000 *et seq.*), and Chapter 31 of the San Francisco Administrative Code, and by Motion No. 21483, the Planning Commission adopted findings, including a rejection of alternatives and a statement of overriding considerations (the “**CEQA Findings**”) and a Mitigation Monitoring and Reporting Program (“**MMRP**”).

I. On January 11, 2024, by Motion No. 21487, the Planning Commission approved Conditional Use Authorization No. 2019-021884CUA (“**CUA**”) for the Project.

J. On March 5, 2024, by Resolution No. 107-24, the Board of Supervisors adopted the CEQA Findings, including the statement of overriding considerations and the MMRP, approved the PDA and authorized the City to pay a \$4,350,000 continuation payment on the terms and conditions of the PDA, and on March 12, 2024, the Board of Supervisors approved Ordinance 58-24 to establish a special use district that allows for housing at the Project Site, as further specified in San Francisco Planning Code Section 249.48 (“**SUD**”).

K. As required by the PDA, PNC and City negotiated (i) the agreement for the design, finance, and construction of the Infrastructure Facility and dated _____ (as may be amended, the “**Project Agreement**”) and (ii) this Agreement for the design, finance, construction, maintenance and operation of the Housing Project.

L. To facilitate the financing of the Infrastructure Facility, PNC and City agreed to have PRG – Potrero Properties LLC (“**IF Developer**”), a Delaware limited liability company that is wholly owned by Provident Resources Group Inc., a Georgia nonprofit corporation that is a tax-exempt entity under Section 501(a) of the Internal Revenue Code as an entity organized under Section 501(c)(3) of the Internal Revenue Code, and City as parties to the Project Agreement, with PNC assuming IF Developer’s obligations to design and construct the Infrastructure Facility under an Implementation Agreement between IF Developer and PNC and dated as of _____ (“**Implementation Agreement**”).

M. Pursuant to the PDA, PNC and City agreed this Agreement would be signed by the Original Developer.

N. Pursuant to Resolution No. _____, adopted by the SFMTA Board of Directors on _____ and Resolution No. _____, adopted by the City’s Board of Supervisors on _____, City entered into the Project Agreement with the IF

Developer for the development of an Infrastructure Facility at the Project Site on the terms and conditions of the Project Agreement.

O. PNC assumed IF Developer’s Project Agreement obligations to design and construct the Infrastructure Facility under the Implementation Agreement.

P. Original Developer and City wish to enter into this Agreement to provide the terms and conditions for the development of the Housing Project through (i) the subdivision (“**Subdivision**”) of the Project Site into two (2) legal parcels (each, a “**Parcel**”), comprised of a Parcel for the Infrastructure Facility (the “**IF Parcel**”) and a Parcel adjacent to the IF Parcel (the “**Housing Parcel**”), as generally depicted on the attached Exhibit B (the “**Depiction of Proposed Parcels**”), (ii) the performance of predevelopment work, and (iii) the City’s lease of the Housing Parcel to the Original Developer, its Affiliate, or any Original Developer assignees under a City-approved Transfer (collectively, “**Developer**”) for the construction, maintenance, and operation of the Housing Project, all as further described in this Agreement.

Q. City was authorized to execute and perform its obligations under this Agreement by SFMTA Board of Directors Resolution No. _____ on _____.

Now, therefore, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. PROJECT OVERVIEW.

1.1. Purpose. This Agreement governs the respective rights and obligations of City and the Developer (each a “**Party**” and together, the “**Parties**”) with respect to the Subdivision, the development of the Housing Project, and the lease of the Housing Parcel.

1.2. Scope of Development. City and IF Developer executed the Project Agreement, and IF Developer and PNC executed the Implementation Agreement, concurrently with the execution of this Agreement. City, IF Developer, PNC, and Developer expect that IF Developer and PNC will commence construction of the Infrastructure Facility in June of 2026 and achieve Substantial Completion of the Infrastructure Facility (“**IF Substantial Completion**”), which includes the issuance of a temporary certificate of occupancy (“**IF TCO**”) for the Infrastructure Facility by City’s Department of Building Inspection, on or before June of 2030. Developer intends to seek Regulatory Approvals to subdivide the Project Site into two (2) legal parcels, as generally depicted on the Depiction of Proposed Parcels (the “**Subdivision**”), and perform predevelopment work to develop the Housing Project on the Housing Parcel. City and Developer anticipate the Housing Project will have approximately one hundred and four (104) residential units and two units of ground-level commercial space collectively comprised of approximately 2,800 square feet.

The number of residential and commercial units and the amount of commercial space may be modified during the term of this Agreement with the approval of the City Project Director, provided, however, that any proposed modification that reduces the number of residential units by more than ten percent (10%) or reduces the amount of commercial space by more than twenty-five percent (25%) shall also require the approval of the SFMTA’s Director of Transportation (“**Director of Transportation**”). Except for one (1) manager’s unit, all of the residential units will be limited to households with incomes up to eighty percent (80%) of the median income for the City and County of San Francisco, as published annually by the Mayor’s Office of Housing and Community Development (“**MOHCD**”), adjusted solely for household size, and derived in part from the income limits and area median income determined by the U.S.

Department of Housing and Urban Development for the San Francisco area, but not adjusted for a high housing cost area. The **“Scope of Development”** means the Subdivision and the development of the Housing Project as described in this Section 1.2 or otherwise modified with the written approval of the City Project Director and, if required, the Director of Transportation.

MOHCD granted Developer a loan (the **“MOHCD Predevelopment Loan”**) for certain Housing Project predevelopment costs pursuant to a Loan Agreement dated as of December 11, 2023, and may provide gap financing if needed for the construction of the Housing Project, MOHCD’s underwriting requirements for that gap financing are satisfied, and the gap financing is duly authorized by the City’s Board of Supervisors. The City, acting in its regulatory capacity, approved the SUD and CUA needed for the Project, and during the term of this Agreement, Developer intends, at its sole cost, to obtain all additional Regulatory Approvals required for the construction or operation of the Housing Project, including the Subdivision, the low-income housing tax credits and financing needed to construct, maintain, repair and operate the Housing Project, develop the Construction Documents and Construction Contract, and select the general contractor that will Construct the Housing Project (the **“Housing Construction Contractor”**). Once Developer completes these activities for the Housing Project, the Housing Parcel will be leased from City to the Developer (or an Approved Affiliate or the transferee under a Permitted Transfer) pursuant to a fully executed lease (the **“Ground Lease”**) if the City Conditions Precedent and Developer Conditions Precedent are fully satisfied or waived by the applicable Party.

The Parties accordingly agree that Construction for the Housing Project cannot commence until after Close of Escrow. The Parties further agree that the construction and operation of the Housing Project cannot directly damage the Infrastructure Facility or cause a material, demonstrable, and adverse interference with the construction of the Infrastructure Facility or Muni Operations at and in the vicinity of the Project Site that is (i) not cured or susceptible to cure and (ii) not inherent or reasonably anticipated from development of an adjoining parcel in an urban, transit-adjacent context, including, without limitation, access, clearance, monitoring, coordination, operations impacts, quality assurance, quality control, protection and safety issues (the **“Compatibility Requirement”**).

1.3. Schedule of Performance. The schedule of performance attached as Exhibit C (**“Schedule of Performance”**) establishes, among other things, the dates (each, a **“Performance Date”**) by which Developer must begin and complete key performance milestones (each, a **“Performance Milestone”**) for the Subdivision, developing the Housing Project (including obtaining the needed Regulatory Approvals and financing), developing and finalizing the Construction Documents and Construction Contract, and satisfying all conditions precedent for the Close of Escrow to be satisfied by Developer by the Outside Date, subject to extension for Force Majeure under Section 11.2. Developer may request changes to the Performance Dates or other revisions to the Schedule of Performance, which may be granted, denied, or conditioned by City in its sole discretion. Developer acknowledges the Outside Date can only be extended in accordance with Section 3.1. For the avoidance of doubt, “Performance Date” and “Performance Milestone” shall not include items included in the Schedule of Performance which City is responsible for performing.

The Schedule of Performance identifies specific Performance Milestones as “Mandatory Performance Milestones” with “Mandatory Performance Dates”. If Developer is not able to timely achieve a Mandatory Performance Milestone by the applicable Mandatory Performance Date, Developer shall deliver written notice (the **“Request for Changed Mandatory Performance Date”**) to the City on or before that applicable Mandatory Performance Date notifying City that the Mandatory Performance Date cannot be met and specifying why Developer could not timely achieve that Mandatory Performance Milestone, Developer’s proposed revised Mandatory Performance Date for that Mandatory Performance Milestone, and

how Developer would be able to satisfy all the City Conditions Precedent to allow for the Close of Escrow on or before the Outside Date with the proposed revised Mandatory Performance Date.

If City reasonably determines that Developer would not be able to satisfy all the City Conditions Precedent for the Close of Escrow on or before the Outside Date with the proposed revised Mandatory Performance Date, then City shall notify Developer in writing (a “**City Response**”) of such determination within fifteen (15) Business Days of receiving the Request for Changed Mandatory Performance Date. Developer shall have the right to deliver a revised Request for Changed Mandatory Performance Date to propose a revised Mandatory Performance Date for City’s consideration within fifteen (15) Business Days of receiving a City Response. If Developer fails to timely submit a revised Request for Changed Mandatory Performance Date, or if Developer timely submits a revised Request for Changed Mandatory Performance Date but City reasonably determines that Developer still would not be able to satisfy all the City Conditions Precedent to allow for the Close of Escrow on or before the Outside Date with the proposed revised Mandatory Performance Date, then City shall have the right to terminate this Agreement by delivering no less than thirty (30) days’ prior written notice of such termination to Developer.

1.4. Relationship of this Agreement to the Ground Lease. This Agreement addresses, among other matters, (i) Developer’s development obligations for the Housing Project during the Term, (ii) terms and conditions for the Close of Escrow and Delivery of the Ground Lease to Developer, and (iii) the Subdivision required before the Close of Escrow. If the City Conditions Precedent and Developer Conditions Precedent are satisfied, then on the Close of Escrow, City will lease the Housing Parcel to Developer, and Developer will lease the Housing Parcel from the City, pursuant to the Ground Lease. On the Close of Escrow, except for obligations that expressly survive the termination of this Agreement, this Agreement will terminate and the Ground Lease will govern the rights and obligations of the Parties with respect to use and occupancy of the Housing Parcel and the Housing Project.

1.5. City’s Reserved Rights. During the Term and so long as there is no uncured Developer Event of Default, City will not solicit or consider any other proposals or negotiate with any other tenant or developer with respect to the long-term development of the Housing Parcel for any housing or commercial uses without Developer’s written consent. Developer acknowledges that IF Developer, PNC, and their respective assigns, agents, contractors, and subcontractors have a right of access to the Housing Parcel through the Warranty Period (as defined in the Project Agreement) under the Project Agreement and the Implementation Agreement.

In addition to the rights of those parties, subject to applicable Laws, City shall have the right to (a) use the Housing Parcel during the Term for any use that does not bring, use or store Hazardous Materials on the Housing Parcel except for gasoline, oil and any other liquids required for and contained within vehicles and equipment (a “**City Use**”) and (b) solicit, consider, negotiate, and enter into agreements for the use of the Housing Parcel during the Term that (i) are for any SFMTA-related purposes, (ii) do not permit the user to bring, use or store Hazardous Materials on the Housing Parcel except for gasoline, oil and any other liquids required for and contained within vehicles and equipment, (iii) are terminable by City on no more than (A) ninety (90) days’ notice prior to the Tax Credit Notice Date and (B) thirty (30) days’ notice following the Tax Credit Notice Date, and (iv) expressly allow due diligence investigation of the Housing Parcel by Developer to the extent permitted under Section 6 (each, a “**Permitted Use Agreement**”); provided, however, that in no event shall the Housing Parcel be used for storage, staging, impoundment, or holding of towed vehicles. City shall terminate all City Uses and Permitted Use Agreements within thirty (30) days of the Tax Credit Notice Date. During the term of this Agreement, City shall not enter into any lease, license or other agreement

for the use or occupancy of the Housing Parcel that is not a Permitted Use Agreement without Developer's prior written consent, which consent shall not be unreasonably withheld or delayed.

2. TERM OF AGREEMENT; FEE.

2.1. Term. The term of this Agreement (“**Term**”) shall be for a period commencing on the full execution of this Agreement (the “**Effective Date**”) and ending on the earlier date (“**Expiration Date**”) to occur of (i) the Close of Escrow, (ii) the Outside Date, (iii) the termination of the Project Agreement or Implementation Agreement, and (iv) any earlier termination of this Agreement pursuant to its terms.

2.2. Fee. Concurrently with the execution of this Agreement and in consideration thereof, Developer shall pay and deliver to City the sum of One Hundred Dollars (\$100.00) as consideration for the City’s execution of this Agreement (“**Fee**”). The Fee is non-refundable and in no way relates to any Ground Lease payments or any other payments under this Agreement that may be owed to the City.

3. DISPOSITION OF LEASEHOLD ESTATE THROUGH ESCROW.

3.1. Agreement to Lease.

(a) Agreement to Lease. Subject to the satisfaction or waiver of all applicable conditions to the Close of Escrow and the terms and conditions of this Agreement, the City agrees to lease the Housing Parcel to the Developer, and the Developer agrees to lease the Housing Parcel from the City, for the development and operation of the Housing Project, all in accordance with and subject to the terms, covenants and conditions of this Agreement and the Ground Lease; provided, however, that the Close of Escrow must occur on or before the second (2nd) anniversary of IF Substantial Completion (the “**Outside Date**”), except to the extent the Outside Date is extended pursuant this Section. City acknowledges that Developer has assigned its right to lease the Housing Parcel under the terms and conditions of this Agreement to PY Bryant Street Housing, LP, a California limited partnership (“**PY Bryant**”), pursuant to a Dropdown LDDA between Developer and PY Bryant and dated as of the Effective Date (the “**Dropdown LDDA**”). City acknowledges and agrees that City has approved the Transfer of that right under the Dropdown LDDA, and accordingly, the definition of “Developer” includes PY Bryant and any of its permitted assignees under the Dropdown LDDA (a “**PY Assignee**”) as long as the Dropdown LDDA is not amended or modified without the City’s prior written consent, which shall not be unreasonably withheld or conditioned, and the conditions of Section 9.6 are met on the Close of Escrow. Accordingly, City shall ensure that all notices and other written communications hereunder are delivered by City to both Original Developer and PY Bryant.

(b) Initial Extension of Outside Date. If the Developer reasonably determines that the Close of Escrow cannot occur by the Outside Date, the Developer can request the City’s approval, in its sole and absolute discretion, to extend the Outside Date. Any written request under this paragraph (an “**Extension Request**”) must be delivered to City no later than one hundred fifty (150) days before the Outside Date and describe, and include sufficient evidence of, the conditions to the Close of Escrow that have been satisfied, the remaining conditions that cannot occur by the Outside Date, the actions the Developer would take to satisfy those remaining conditions in a timely and expeditious manner, and the Developer’s estimate of the additional time needed to satisfy the remaining conditions.

If City requests additional information to support the Extension Request, City shall send Developer a written request for the additional information within thirty (30) days of Developer delivering the applicable Extension Request. If City requests further information to support the Extension Request after Developer has provided additional information, then City shall request that information within thirty (30) days of receiving the earlier requested additional

information. This process shall continue until City has received all additional information it requests to support an Extension Request, and the date that City receives all the requested additional information will be deemed to be the date that City received that Extension Request.

The Director of Transportation shall provide a written response to approve or deny an Extension Request within (i) sixty (60) days of receiving an Extension Request if approving the Extension Request would not also require the approval of the SFMTA Board of Directors or Board of Supervisors, and (ii) one hundred twenty (120) days of receiving the Extension Request if approving the Extension Request would also require the approval of the SFMTA Board of Directors or Board of Supervisors. If the Director of Transportation approves the Extension Request, the Outside Date shall be automatically extended by the shorter of (i) the additional time requested by Developer in the Extension Request and (ii) twenty-four (24) months. If the Director of Transportation denies the Extension Request, then the Developer's right to lease and develop the Housing Parcel shall terminate as of the Outside Date.

If City elects to approve an Extension Request for the Outside Date, City shall have the right to require Developer to terminate any Permitted Transfer (including the Transfer to PY Bryant) of its rights to lease and develop the Housing Parcel under Section 9.6 by including that requirement in City's written approval of the Extension Request.

(c) Additional Extensions of Outside Date. After any initial extension of the Outside Date pursuant to Section 3.1(b), Developer shall have the right, and the City, in its sole discretion, shall have the right to grant, up to two (2) more extensions of that extended Outside Date pursuant to the Extension Request process under Section 3.1(b).

3.2. Form of Ground Lease.

(a) Initial Draft. On or before the thirtieth (30th) day following the date Developer delivers to City a copy of its submitted and complete application for an allocation of low income housing tax credits for the Housing Project to the California Tax Credit Allocation Committee, which can only occur after City has approved the Preliminary Construction Documents, City shall send the initial form of ground lease to Developer for its review, which initial form shall be substantially in the form used by MOHCD at that time for affordable housing projects to be developed on City property, and include the following terms, unless otherwise mutually agreed to by the Parties:

(i) Term. The Ground Lease shall become effective immediately following the Close of Escrow and shall end on the seventy-fifth (75th) anniversary of the Close of Escrow, provided that the tenant shall have an option to extend the term for an additional twenty-four (24) years for no additional consideration (but rent shall continue during any extended term as set forth below).

(ii) Taxes and Assessments. The tenant shall be responsible for the payment of any and all property taxes and assessments levied against the leasehold estate and the Housing Parcel during the term of the Ground Lease, subject to any abatement available for those taxes or assessments.

(iii) Project Use. The Housing Parcel shall be used only for affordable housing during the Ground Lease term, with maximum average rent and income restriction categories at no more than eighty percent (80%) of AMI and ancillary uses approved by the Director of Transportation, including community-serving uses. The rents charged to the affordable unit lessees shall not exceed 30% of income less a reasonable utility allowance. If required by the Housing Project's tax credit investor based on the Housing Project's residual value analysis test, and if approved by the Director of Transportation in their reasonable

discretion, the Ground Lease may permit increases in the maximum rent and income levels after the fifty-fifth (55th) year of the Ground Lease term, but such increases shall be limited only to the extent necessary to satisfy the Housing Project's residual value analysis test.

(iv) Rent. The tenant shall pay City annual rent in the amount of ten percent (10%) of the land value of the Housing Parcel (as determined by an appraiser with a designation of MAI from the Appraisal Institute (a "**Qualified Appraiser**") and selected by, and at the sole cost of, the tenant), consisting of \$15,000 in base rent and the remainder (if any) in residual rent, provided that rent shall not exceed the fair market value of the tenant's leasehold interest. Unpaid base rent shall accrue without interest. The residual rent shall be payable only to the extent proceeds are available from the Housing Project after deductions for Housing Project operating expenses, mandatory debt service payments (including soft debt payments), property management fees, reserve deposits required by Housing Project lenders, deferred developer fees, and asset and partnership management fees in amounts permitted in accordance with the then-current MOHCD policy. Unpaid residual rent shall not accrue. If required by the Housing Project's tax credit investor based on the Housing Project's residual value analysis test, and if approved by the Director of Transportation in their reasonable discretion, residual rent shall only be payable after full repayment of any Housing Project residual receipts gap loan financing provided by MOHCD. The annual rent shall be adjusted on the fifteenth (15th) anniversary of the expiration of the first full calendar lease year and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of then appraised value of the land as determined by a Qualified Appraiser selected by, and at the sole cost of, the tenant. Any such adjustment shall be made to the residual rent and not the base rent.

(v) Construction and Operation of the Housing Project. The tenant shall be responsible, at its sole cost, for construction, operation, and maintenance of the Housing Project during the Ground Lease term. Developer shall cause the Housing Construction Contractor to provide the City Project Director with reasonably detailed explanations and descriptions of the procedures and methods of Construction that satisfy the Compatibility Requirement. The City Project Director shall have the right to reasonably require changes to any procedures and methods of Construction to the extent they do not meet the Compatibility Requirement.

(vi) Title to Housing Parcel and Housing Project. The Ground Lease shall provide that the City will own fee title to the Housing Parcel, and the tenant will own fee title to all Housing Improvements constructed or otherwise located on the Housing Parcel during the Ground Lease term.

(vii) Disposition of Housing Improvements. On the expiration or earlier termination of the Ground Lease, fee title to all the Housing Improvements shall vest in the City without further action of any party, without any obligation by the City to pay any compensation therefor to the tenant and without the necessity of a deed from the tenant to the City.

(viii) Mortgagee Protections. The Ground Lease shall include standard mortgagee protection provisions.

(ix) Defaults; Right to Cure. The City will provide any notice of any defaults under the Ground Lease to the tenant's limited partners and lenders, and allow any such parties the right to cure a default by the tenant under the Ground Lease. Pursuant to the terms of the Ground Lease, City shall not be entitled to terminate the Ground Lease following any uncured default by the tenant during the fifteen (15) year tax credit compliance period for the Housing Project, except if such default is failure to pay rent or use the Housing Parcel for affordable housing.

(x) Encumbrances. The Ground Lease will permit the tenant to encumber its leasehold interest in the Housing Parcel to secure any loans deemed necessary by the tenant, as approved by the City. Any funds from a loan secured by the Housing Parcel must be used for the development, maintenance, rehabilitation or operation of the Housing Project.

(xi) City Review and Approval Rights. The Ground Lease will require the prior review and approval of the City to any material changes to the approved Housing Project construction documents and material modifications to the Housing Project after initial construction.

(xii) Insurance. Insurance requirements shall be as required by the City Project Director, in consultation with the City's Risk Manager.

(xiii) Affirmative Marketing. Unless otherwise mutually agreed to by the Parties, the tenant shall affirmatively and directly market the units to families and longtime residents in the Mission, Potrero, and Bayview-Hunters Point communities at schools, places of worship, and neighborhood organizations in these communities. The tenant shall hire and train its staff and training promotoras/street teams to assist families and longtime residents in these communities with the housing application process. Written and oral outreach materials presented at community meetings shall be in multiple languages based on the languages spoken in the communities.

(xiv) Lease of Commercial Spaces. Unless otherwise mutually agreed to by the Parties, the Housing Project's two commercial space units will be leased to organizations based in the Mission, Potrero, and/or Bayview-Hunters Point and small businesses rooted in keeping the arts and culture of the neighborhood, with the leases having up to a 55-year term and rent at \$2/sf triple net with escalation.

(xv) Acknowledgement of Muni Operations. The Ground Lease will include the tenant's (i) acknowledgement that the Infrastructure Facility will be used for Muni Operations and other SFMTA uses that can create noise, parking congestion, vehicular and rail traffic, odors, dust, dirt and visual obstructions, and (ii) waiver to the maximum extent authorized by law, of any and all rights to commence or maintain a lawsuit for common law or statutory nuisance, inverse condemnation or other legal action, based upon interference with the comfortable enjoyment of life or property or similar claims with respect to the Housing Parcel, arising out of the existence of the Muni Operations or other SFMTA uses of the Infrastructure Facility or IF Parcel or any expansion, modification or addition to such uses or the Infrastructure Facility.

(b) Negotiations. Following City's delivery of the initial draft of the Ground Lease to Developer, Developer and the City Project Director shall negotiate in good faith on the final terms of the Ground Lease. If the Developer and the City Project Director mutually agree to the final terms of the Ground Lease by the earlier to occur of (i) ninety (90) days after the California Tax Credit Allocation Committee allocates low income housing tax credits to the Housing Project and (ii) ninety (90) days before the Outside Date, or any later date agreed to by the Parties, then City staff will submit the Ground Lease to the SFMTA Board of Directors and Board of Supervisors for approval, each acting in its sole discretion.

Developer understands and agrees that although MOHCD and the SFMTA are departments of the City, City staff and executives have no authority or influence over the SFMTA Board of Directors, the Board of Supervisors, or other City boards or commissions for approval of the Ground Lease. Accordingly, there is no guarantee or a presumption that the final form of Ground Lease negotiated by the Parties under this Agreement will be approved by the SFMTA Board of Directors or the Board of Supervisors. City's sole obligation under this

Agreement with respect to the approval of the Ground Lease shall be to negotiate in good faith with Developer and present and recommend the final form of Ground Lease, if mutually agreed to by Developer and the Director of Transportation, to the SFMTA Board of Directors and the Board of Supervisors for their review and consideration, acting in their respective sole discretion.

3.3. [Reserved]

3.4. Escrow.

(a) Opening of Escrow. The Developer shall open an escrow for the Delivery of a leasehold estate in the Housing Parcel through the Ground Lease ("**Escrow**") with the San Francisco office of any title company that is selected by the Developer and approved by the City ("**Title Company**"). The Developer shall open the Escrow no later than the earlier of (i) the Performance Date for Close of Escrow and (ii) the Close of Escrow date specified in the Project Construction Schedule.

(b) Closing Date. The Close of Escrow must occur no later than the Outside Date. Notwithstanding the foregoing, the Close of Escrow may not occur before the City Conditions Precedent and the Developer Conditions Precedent are either satisfied or waived by the Party that is benefited by such conditions. If all of the City Conditions Precedent and the Developer Conditions Precedent are not satisfied or waived by the Performance Date for the Close of Escrow, but City determines that remaining City Conditions Precedent and/or the Developer Conditions Precedent, as applicable, can be reasonably satisfied on or before the fourteenth (14th) day immediately following that Performance Date, then City shall have the right, in its sole election, to extend the Close of Escrow by up to fourteen (14) days.

(c) Escrow Instructions. Each Party shall prepare escrow instructions as are necessary and consistent with this Agreement and deliver a draft copy of those escrow instructions to the other Party no less than ten (10) days before the Performance Date for the Close of Escrow. Each Party shall accept or provide comments on the other Party's escrow instructions within three (3) Business Days after receipt. Developer's escrow instructions shall, among other things, provide that the Title Company will record a Lease Memorandum for the Ground Lease substantially in the form mutually approved by the Parties at the Close of Escrow, as well as any other documents which are to be recorded on the Close of Escrow.

(d) Costs of Escrow. The City shall not be required to pay any costs or expenses for or related to the Escrow. The Developer shall pay all fees, charges, costs and other amounts necessary for Escrow and the Close of Escrow (collectively, "**Escrow Costs**"), including, but not limited to, any escrow fees, the costs of any title reports, surveys, inspections or premiums for any title insurance policies and endorsements obtained by the Developer, recording fees, if any, and transfer taxes, if any (together, "**Closing Costs**"). The Developer shall pay any Closing Costs within the times necessary for the Close of Escrow, as set forth in a closing statement or other statement prepared by the Title Company for an Escrow.

3.5. Conditions to the City's Obligation for Close of Escrow.

(a) City's Conditions Precedent. The following are conditions precedent ("**City Conditions Precedent**") to City's obligation for the Close of Escrow for the Ground Lease:

(i) Either IF Substantial Completion shall have occurred or each of the Early Delivery Conditions (defined as follows) shall have been satisfied. The "**Early Delivery Conditions**" shall mean: (A) the Housing Construction Contractor and the Infrastructure Facility construction contractor are the same party, (B) the existing improvements at the Project Site shall

have been demolished and construction of the Infrastructure Facility shall have commenced under the Project Agreement and the Implementation Agreement, (C) the IF Developer shall have provided written notice to City that the IF Developer's right of access to the Project Site under the Project Agreement shall be limited to the IF Parcel, which notice shall have been duly authorized and approved by IF Developer's lenders and investors (to the extent such consent is required under the agreements between IF Developer and its respective lenders and investors), (D) PNC shall have provided written notice to City and the IF Developer that its right of access to the Project Site under the Implementation Agreement is limited to the IF Parcel, which notice shall have been duly authorized and approved by PNC's lenders and investors (to the extent such consent is required under the agreements between PNC and its respective lenders and investors), and (E) the Infrastructure Facility construction contractor shall have provided City with written confirmation that it is prepared to commence Housing Project construction within thirty (30) days of the Close of Escrow.

(ii) The Housing Parcel shall be a separate legal parcel.

(iii) Developer shall have delivered written notice to City of its anticipated closing date for the Close of Escrow (the "**Target Close Date**"), which shall be no later than the Outside Date, and such notice shall be delivered at least one hundred eighty (180) days prior to the Target Close Date.

(iv) There shall be no Adverse Change unless Developer elects to proceed with the Close of Escrow regardless of that Adverse Change.

(v) Developer shall have performed all obligations to be performed on its part under this Agreement as of the Close of Escrow and there shall be no uncured Event of Default on the Developer's part under this Agreement beyond any applicable cure period for that Event of Default.

(vi) There shall be no uncured event of default by Developer or any of its assignees under Permit to Enter beyond any applicable cure period for that event of default.

(vii) Either (A) the Implementation Agreement and the Project Agreement shall be in full force and effect, with no uncured event of default (or unmatured event of default) on PNC's part under the Implementation Agreement or the IF Developer's part under the Project Agreement, or (B) the Implementation Agreement and Project Agreement have terminated after the expiration of the Warranty Period, IF Substantial Completion, and the full satisfaction of PNC's obligations under the Implementation Agreement and the IF Developer's obligations under the Project Agreement.

(viii) The Parties shall have agreed to the form of Ground Lease and the City Project Director shall have reviewed and approved the Final Budget, which shall be attached as an exhibit to the Ground Lease.

(ix) If Developer requires MOHCD gap financing to Construct or operate the Housing Project, Developer shall have satisfied MOHCD's underwriting requirements for that financing, that financing shall have been authorized by the City's Board of Supervisors, and MOHCD staff shall have authorized the closing of that financing.

(x) Developer's construction lender shall have authorized the closing of the Housing Project construction loan and all conditions to the close of any other financing to be used by Developer to Construct the Housing Project shall have been satisfied or waived with that financing closing simultaneously with the Close of Escrow.

(xi) The City Project Director shall have reviewed and approved the Construction Documents, Project Construction Schedule, Construction Contract, and Developer's integrated pest management plan for the Ground Lease.

(xii) The Developer shall have obtained all Regulatory Approvals needed to commence construction of the Housing Project, including without limitation, any required civic design approvals by the City Arts Commission (to the extent then required) and DBI issuance of a site permit and all addenda necessary to commence construction of the Housing Project ("**Site Permit**"), and such Regulatory Approvals shall be final, binding and non-appealable and all applicable statutes of limitation relating to those Regulatory Approvals, including without limitation, with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to those Regulatory Approvals.

(xiii) Developer, its manager and its members shall have delivered to City a certificate to confirm the accuracy of the representations and warranties in Section 14.1 as of the Effective Date and as of the Close of Escrow substantially in the form of Exhibit D (the "**Certificate of Representations and Warranties**").

(xiv) If a Non-Developer Assignee will be the party entering into the Ground Lease, Developer must obtain the City's consent (with City acting in its sole discretion) to an advisory services agreement (an "**Advisory Services Agreement**") with Plenary Americas USA Ltd, or its affiliate (either, the "**Advisor**") and the Advisory Services Agreement shall have been duly executed by the Advisor and the Non-Developer Assignee and delivered to City. The Advisory Services Agreement shall require Advisor, using qualified professionals, to provide advisory services to the Non-Developer Assignee to ensure the Housing Project is constructed in compliance with the Ground Lease and the Compatibility Requirement. The Advisory Services Agreement shall require Advisor to promptly notify the Non-Developer Assignee and City in writing if it determines the Non-Developer Assignee is taking or failing to take any action that would not comply with the Ground Lease and the Compatibility Requirement, provided, however that such Advisory Services Agreement shall neither obligate nor give the Advisor the right to "step-in" or otherwise guaranty the obligations of Non-Developer Assignee under the Ground Lease.

(xv) Developer shall have submitted to Escrow the Ground Lease, which shall be in the form required under Section 3.2 and duly executed by Developer, the Memorandum of Ground Lease, which shall be duly executed and acknowledged by Developer, and evidence of the insurance required to be provided under the Ground Lease on or before it is effective.

(xvi) Developer shall have submitted into Escrow the payment and performance bonds for the Housing Project required under the Ground Lease, duly executed by the issuer(s) of such bonds.

(xvii) Developer shall have submitted funds into Escrow sufficient to pay the Escrow Costs for the Escrow and Close of Escrow.

(xviii) The Title Company shall be irrevocably committed to issue to the City the title insurance policy required by Section 3.9(a) (ii) to be delivered to the City.

(xix) City shall have approved the submissions the Developer is required to make regarding the City Requirements in accordance with Article 17 and the Developer shall have executed and delivered to the City the City's Declaration: Nondiscrimination in Contracts and Benefits form and the required supporting documentation, and shall have secured approval

of the form by the San Francisco Contracts Monitoring Division (formerly the Human Rights Commission).

(xx) Developer shall have submitted into Escrow evidence of Developer's authority to enter into the Ground Lease and the transactions contemplated by the Ground Lease and this Agreement as the City and the Title Company may reasonably require, including, without limitation, legal opinions regarding due authorization and execution.

(xxi) If the Developer has Transferred its right to enter into the Ground Lease to a Non-Developer Assignee in compliance with the requirements of Article 9, the Developer shall have submitted into Escrow evidence of Developer's and Advisor's authority to enter into the Advisory Services Agreement and the transactions contemplated by the Advisory Services Agreement, as the City may reasonably require, including, without limitation, legal opinions regarding due authorization and execution.

(xxii) The authorizations and approvals required from the Board of Directors and the City's Board of Supervisors for this Agreement, the Ground Lease and any other agreements contemplated by this Agreement to be executed by City in connection with the Ground Lease shall be effective, final, binding and non-appealable.

(xxiii) There shall be no changes in Laws after the Effective Date that would (A) prevent the performance of the Parties' obligations as contemplated in the Ground Lease and, if applicable, the performance of the obligations of Developer or Advisor under the Advisory Services Agreement, or (B) have a material adverse effect on the Housing Project or an adverse effect on City.

(xxiv) The California Department of Housing and Community Development ("HCD") shall not have determined that the Ground Lease fails to meet the requirements for a disposition of "exempt surplus land" under and as defined in California Government Code Section 54220 *et seq* following City's timely delivery of written findings and documentation that the Housing Parcel is "exempt surplus land" to HCD, and a declaration of restrictions (the "**State Restrictive Covenant**") in the form required by HCD thereunder shall have been recorded, or will be recorded at the Close of Escrow, against the Housing Parcel.

(xxv) Developer and the City's Contract Monitoring Division shall have mutually approved the final LBE Plan.

(xxvi) Developer and Program staff shall have agreed to the Trainee Plan.

(b) Satisfaction of City's Conditions Precedent. The conditions precedent set forth in Section 3.5(a) are intended solely for the benefit of the City. If any such condition precedent is not satisfied for the Close of Escrow on or before the Target Close Date, and the Developer is not making commercially reasonable efforts to satisfy such condition(s), the City, acting through the Director of Transportation, shall have the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with the Close of Escrow, or (ii) terminate this Agreement and exercise all of its rights and remedies hereunder. If any such condition precedent is not satisfied for the Close of Escrow on or before the Target Close Date, but the Developer is making commercially reasonable efforts to satisfy such condition(s), the City, acting through the Director of Transportation, shall have the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with the Close of Escrow, or (ii) extend the Target Close Date to allow such conditions precedent to be satisfied during a period specified by City in a written notice to Developer, subject to City's right to terminate this Agreement on the expiration of the extension period if all such conditions precedent have not been satisfied by that expiration, and to exercise all of its rights and remedies hereunder.

3.6. Conditions to the Developer's Obligation to Close Escrow.

(a) Developer's Conditions Precedent. The following are conditions precedent (“**Developer Conditions Precedent**”) to the Developer's obligation to the Close of Escrow and accept Delivery of the Housing Parcel:

(i) Either IF Substantial Completion shall have occurred or each of the Early Delivery Conditions shall have been satisfied.

(ii) The Housing Parcel shall be a separate legal parcel.

(iii) Developer shall have delivered written notice to City of the Target Close Date, which shall be no later than the Performance Date for the Outside Date and such notice shall be delivered at least one hundred and eighty (180) days prior to that Target Close Date.

(iv) There shall be no Adverse Change unless Developer elects to proceed with the Close of Escrow regardless of that Adverse Change.

(v) City shall have performed all obligations on its part under this Agreement and no uncured Event of Default beyond any applicable notice and cure period exists on the City's part under this Agreement.

(vi) Either (A) the Implementation Agreement and the Project Agreement shall be in full force and effect, with no uncured event of default (or unmatured event of default) on PNC's part under the Implementation Agreement or the IF Developer's part under the Project Agreement, or (B) the Implementation Agreement and Project Agreement have terminated after the expiration of the Warranty Period and full satisfaction of PNC's obligations under the Implementation Agreement and the IF Developer's obligations under the Project Agreement.

(vii) The Parties shall have agreed to the form of Ground Lease and the City Project Director shall have reviewed and approved the Final Budget, which shall be attached as an exhibit to the Ground Lease.

(viii) If Developer requires MOHCD gap financing to Construct or operate the Housing Project, Developer shall have satisfied MOHCD's underwriting requirements for that financing, it shall have been authorized by the City's Board of Supervisors, and MOHCD staff shall have authorized the closing of the financing.

(ix) Developer's construction lender shall have authorized the closing of the Housing Project construction loan and all conditions to the close of any other financing to be used by Developer to Construct the Housing Project shall have been satisfied or waived with that financing closing simultaneously with the Close of Escrow.

(x) The City Project Director shall have reviewed and approved the Construction Documents, Project Construction Schedule, Construction Contract, and Developer's integrated pest management plan for the Ground Lease.

(xi) The Developer shall have obtained all Regulatory Approvals to commence construction and operate the Housing Project, including City's Arts Commission civic design review approval (to the extent then required) and DBI issuance of the Site Permit, and such Regulatory Approvals shall be final, binding and non-appealable and all applicable statutes of limitation relating to such Regulatory Approvals, including, without limitation, with

respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such Regulatory Approvals.

(xii) If the Dropdown LDDA remains in effect or has been terminated, but Developer has Transferred its right to enter into the Ground Lease to a Non-Developer Assignee in compliance with the requirements of Article 9, the Advisory Services Agreement required for the Ground Lease shall have been duly executed by the applicable Non-Developer Assignee.

(xiii) City shall have submitted to Escrow the Ground Lease, which shall be in the form required under Section 3.2 and duly executed by City, and the Memorandum of Ground Lease, which shall be duly executed and acknowledged by City.

(xiv) The Title Company shall be irrevocably committed to issue to the City the title insurance policy required by Section 3.9(a)(ii) to be delivered to the City, if any.

(xv) The Title Company shall be irrevocably committed to issue to the Developer, on payment by the Developer of the premium thereunder, the title insurance policy required by Section 3.9 for the Housing Parcel to be delivered to the Developer.

(xvi) City shall have approved the submissions the Developer is required to make regarding the City Requirements, in accordance with Article 17, and the Developer shall have executed and delivered the City's Declaration: Nondiscrimination in Contracts and Benefits form and the required supporting documentation, and shall have secured approval of the form by the San Francisco Contracts Monitoring Division (formerly the Human Rights Commission).

(xvii) All authorizations and approvals required by the Board of Directors or the Board of Supervisors for this Agreement, the Ground Lease, and any other agreements contemplated by this Agreement to be executed by City for the Ground Lease shall have been completed and shall have become and remain effective, and such approvals shall be final, binding and non-appealable.

(xviii) There shall be no changes in Laws that would (A) prevent the performance of the Parties' obligations as contemplated in the Ground Lease and, if applicable, the performance of the obligations of Developer or Advisor under the Advisory Services Agreement, or (B) have an adverse effect on the Housing Project or on Developer.

(xix) HCD shall not have determined that the Ground Lease fails to meet the requirements for a disposition of "exempt surplus land" under and as defined in California Government Code Section 54220 *et seq.*, and the State Restrictive Covenant shall have been recorded, or will be recorded at the Close of Escrow, against the Housing Parcel.

(b) Satisfaction of the Developer's Conditions Precedent. The Developer Conditions Precedent are intended solely for the benefit of the Developer. If any Developer Condition Precedent is not satisfied for the Close of Escrow on or before the Target Close Date, and the City is not making commercially reasonable efforts to satisfy such Developer Condition(s) Precedent, the Developer shall have the right in its sole discretion to (i) waive in writing the Developer Condition Precedent in question and proceed with the Close of Escrow, or (ii) terminate this Agreement and exercise all of its rights and remedies hereunder. If any Developer Conditions Precedent is not satisfied for the Close of Escrow on or before the Target Close Date, but the City is making commercially reasonable efforts to satisfy such Developer Condition(s) Precedent, the Developer shall have the right in its sole discretion to (i) waive in writing the Developer Conditions Precedent in question and proceed with the Close of Escrow,

or (ii) extend the Target Close Date to allow such Developer Condition(s) Precedent to be satisfied during a period specified by Developer in a written notice to City, subject to Developer's right to terminate this Agreement on the expiration of the extension period if all such Developer Conditions Precedent have not been satisfied by that expiration, and to exercise all of its rights and remedies hereunder.

3.7. Delivery of Ground Lease.

(a) Obligation to Close Escrow. Provided that the City Conditions Precedent and the Developer Conditions Precedent have been satisfied or expressly waived by the benefited Party on or before the Target Close Date or as otherwise set forth in this Agreement, City and Developer will instruct the Title Company to complete the Close of Escrow as set forth below. On the Close of Escrow, the Ground Lease will be Delivered to Developer (or Non-Developer Assignee, if applicable), and Developer (or Non-Developer Assignee, if applicable) will accept such Delivery.

(b) Steps to Close Escrow. The Close of Escrow will be completed as follows:

(i) On or before Close of Escrow, City will execute and acknowledge, as necessary, and deposit into Escrow with the Title Company the following documents: (1) the Ground Lease and Memorandum of Ground Lease, and (2) copies of the resolution(s) of the SFMTA Board of Directors and City's Board of Supervisors authorizing and approving the Ground Lease.

(ii) On or before the Close of Escrow, Developer will execute and acknowledge (or cause to be executed and acknowledged), as necessary, and deposit into Escrow with the Title Company the following: (1) the Ground Lease and Memorandum of Ground Lease, (2) if the Ground Lease will be executed by a Non-Developer Assignee, the duly executed Advisory Services Agreement; (3) the Certificate of Representations and Warranties, which shall also be executed by Developer's manager and member and dated as of the date of the Close of Escrow, (4) such resolution(s) of Developer authorizing its execution and delivery of the Ground Lease, this Agreement, the Advisory Services Agreement (if applicable), and any other evidence of authority as City or the Title Company may reasonably require; (5) all Closing Costs; (6) the payment and performance bonds in the forms required under the Ground Lease; and (8) if Developer finances the construction of the Housing Project with a leasehold lender or other funders, the leasehold deed of trust(s) and other related loan documents.

(iii) On receipt of confirmation from the Title Company that it has received the items described in Section 3.7(b)(i) and Section 3.7(b)(ii) and, if applicable, is ready to disburse funds to the applicable Parties, City and Developer will instruct the Title Company to close the Escrow in compliance with the Parties' respective escrow instructions. On the Close of Escrow, the Title Company will record, in the Official Records as an encumbrance against the Developer's leasehold interest in the Housing Parcel, (A) Memorandum of Ground Lease, (B) any deed of trust, regulatory agreement, or other documents required under the City approved financing described in the Final Budget, and (C) any other documents reasonably required to be recorded in the Official Records under the terms of Regulatory Approvals or under Law.

(iv) The Title Company will issue title policies for the Ground Lease to Developer and City as required under Section 3.9(a).

(c) Waiver of Pre-Delivery Conditions. Unless the Parties otherwise expressly agree in writing at the time of Close of Escrow, all conditions of the Parties to the

Close of Escrow will, on the Close of Escrow, be deemed waived by the Party benefited by such condition as of the Close of Escrow.

3.8. Condition of Title.

(a) Permitted Title Exceptions. Except for the State Restrictive Covenant, any title exceptions resulting from the Subdivision, the Project Agreement and the Implementation Agreement (including but not limited to the rights of access granted thereunder), the SUD or CUA, any other Regulatory Approvals for the Housing Project, the construction of the Infrastructure Facility and the related construction financing, or otherwise consented to by the Developer, and such other matters as Developer shall cause to arise or which arise in connection with Developer's entry on the Housing Parcel under a Permit to Enter prior to the Close of Escrow (collectively, the "**Permitted Title Exceptions**"), the City shall Deliver to the Developer a leasehold interest in the Housing Parcel as of the Close of Escrow and under and subject to the provisions of the Ground Lease and for the term specified in the Ground Lease, free and clear of (i) possession and rights of possession of the Housing Parcel by others (except as reserved to the City in the Ground Lease), provided that Developer provides City with at least one hundred eighty (180) days' prior notice of the anticipated Close of Escrow, and (ii) liens, encumbrances, covenants, assessments, easements, leases and taxes created by the acts of City as fee owner of the Housing Parcel after the Effective Date (an "**Unpermitted Title Exception**").

(b) Title Defect. If, on the Target Close Date, there remains (i) any possession and rights of possession of the Housing Parcel by others (except as reserved to the City in the Ground Lease or given to other parties under the Permitted Title Exceptions), or (ii) any Unpermitted Title Exception that encumbers the Housing Parcel and would materially and adversely affect the development or operation of the Housing Project on the Housing Parcel (a "**Title Defect**"), then the City will have up to ten (10) days after the Target Close Date to remove the Title Defect; provided, however, that if removal of that Title Defect cannot reasonably be accomplished within such ten (10) day period and City is using commercially reasonable efforts to remove the Title Defect, that period shall be extended an additional twenty (20) days or any other date mutually approved by the City Project Director and the Developer Project Director. If the Title Defect can be removed by bonding and the City has not so bonded within the applicable removal period, the Developer may in its sole discretion cause a bond to be issued. If the Developer causes a bond to be issued in accordance with this Section 3.8(b), then City, at its option, will reimburse Developer for the cost of such bond within sixty (60) days of demand therefor or offset such amounts against Developer's obligations to pay any rent due under the Ground Lease.

(c) Developer's Remedies for an Uncured Title Defect. If a Title Defect exists as of the Target Close Date, as extended under Section 3.8(b), and all other of the City's Conditions Precedent have been satisfied, then unless the Parties mutually agree to further extend the Target Close Date, Developer may by written notice to the City either (i) terminate this Agreement as to the Parties' respective obligations for the development of the Housing Project and Delivery of a leasehold interest in the Housing Parcel or (ii) accept Delivery of a leasehold interest in the Housing Parcel under the Ground Lease. If the Developer elects to accept Delivery, the Title Defect will be deemed waived; provided, however, that if the Title Defect was caused by City's actions as owner of the Housing Parcel without the Developer's consent, then City shall use commercially reasonable efforts to cause the Title Defect to be removed. If the Developer does not accept Delivery due to a Title Defect and fails to terminate its rights under this Agreement with respect to the Ground Lease and Housing Project, then within thirty (30) days after the Target Close Date or any extension thereof as provided above, the City may terminate this Agreement with respect to the Ground Lease and Housing Project on ten (10) days written notice to the Developer.

If the Agreement is terminated with respect to the Ground Lease and Housing Project under this subsection (c), then Developer shall have no further remedies against the City with respect to such termination. If Developer does not accept Delivery due to a Title Defect and fails to terminate this Agreement with respect to the Ground Lease and Housing Project within seven (7) days after the Target Close Date (as may be extended under Section 3.8(b)), and City elects not to terminate this Agreement with respect to the Ground Lease and Housing Project as set forth in this Section, this Agreement shall continue in full force and effect with respect to the Ground Lease and Housing Project and any Title Defect will be deemed waived and City shall have all of its rights and remedies under this Agreement, at law and in equity.

(d) Covenants of City Regarding the Housing Parcel Before the Close of Escrow. Developer acknowledges that after the execution of this Agreement, the existing improvements at the Project Site are to be demolished and the Infrastructure Facility is to be constructed at the Project Site pursuant to the Project Agreement and Implementation Agreement. In addition to its obligations under Section 3.8(b), and not in limitation of Developer's rights under Section 3.6, the City will not, in its proprietary capacity as owner of the Project Site, intentionally take or permit any actions that materially alters the condition of title to the Housing Parcel existing as of the date of this Agreement except to the extent to related to the financing or construction of the Infrastructure Facility (including but not limited to any federal funding), the Subdivision, or as otherwise contemplated in this Agreement, the Ground Lease, the Project Agreement or the Implementation Agreement.

3.9. Title Insurance.

(a) Title Insurance to be Issued at the Close of Escrow. The escrow instructions described in Section 3.4(c) will provide that concurrently with the Close of Escrow, the Title Company will issue and deliver:

(i) to the Developer an A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as the Developer may reasonably request, in an amount reasonably designated by the Developer which is satisfactory to the Title Company, insuring that the leasehold estate in the Housing Parcel subject to the Ground Lease to be Delivered through the Close of Escrow is vested in the Developer subject only to the Permitted Title Exceptions, and with such C.L.T.A. form endorsements and such other endorsements as may be reasonably requested by the Developer, all at the sole cost and expense of the Developer; and

(ii) to the City an A.L.T.A. extended coverage title insurance policy issued by Title Company in an amount specified by the City and satisfactory to the Title Company, insuring the City's fee interest in the Housing Parcel subject only to the Ground Lease to be Delivered through the Close of Escrow and the Permitted Title Exceptions that are applicable to City's fee interest, and with such C.L.T.A. endorsements as the City may reasonably request, all at the sole cost and expense of the Developer.

(b) Surveys. Developer is responsible for securing any and all surveys and engineering studies at its sole cost and expense, as needed for the title insurance required under this Agreement or as otherwise required to consummate the transactions contemplated by this Agreement. The Developer shall provide the City with complete and accurate copies of all such final surveys (which shall be certified to City in a form reasonably satisfactory to City) and engineering studies on or before the applicable Close of Escrow.

(c) Construction Endorsement. If the title insurance policy described in Section 3.9(a)(ii) is issued to the City and Developer obtains an endorsement to its title insurance policy with respect to the Housing Parcel insuring Developer that the Housing Project has been

completed free and clear of all mechanics' and materialmen's liens, Developer shall also obtain such an endorsement for the City with respect to City's title insurance policy, provided that there is no incremental cost to Developer for such endorsement in excess of the cost of such endorsement to Developer's title policy with respect to that Housing Parcel. If such endorsement is available only at an incremental cost, the City shall either pay the incremental cost or elect not to receive such endorsement, but in any case the Developer shall have no obligation to procure such endorsement on behalf of the City. Developer's obligations under this subsection (c) shall survive the Close of Escrow and the termination of this Agreement.

(d) Restrictions on Encumbering City's Fee Interest; Leasehold Interest.

Under no circumstance whatsoever shall Developer place or suffer to be placed any lien or encumbrance on City's fee interest in the Housing Parcel or any other portion of the Project Site in connection with any financing for the construction or operation of the Housing Project or otherwise. As will be further detailed in the Ground Lease, project financing from institutional lenders, governmental entities, nonprofits and other lenders may be secured by the applicable party's leasehold estate or subleasehold estate in the Housing Parcel at the Close of Escrow, and the City will consent to reasonable provisions in lease riders and/or affordability covenants/restrictions required to receive public financing if such riders and covenants (including tax credits, and state grants or loans) are approved by the City Project Director, provided that such riders and covenants are materially consistent with the Ground Lease or required to be made hereafter, and do not increase City's liability as reasonably determined by the City Project Director.

3.10. Taxes and Assessments.

(a) Ad Valorem Taxes and Assessments. For any period before Close of Escrow, Developer is responsible for the payment of any ad valorem taxes (including possessory interest and special taxes) assessed by reason of this Agreement or Developer's entry on the Project Site under a Permit to Enter or any other agreement.

(b) Possessory Interest Tax. Developer recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Developer may be subject to the payment of property taxes levied on such interest. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City report certain information relating to this Agreement, any assignment or transfer of Developer's interest in this Agreement, and any extension or renewal of this Agreement to the County Assessor within sixty (60) days after any such transaction, and that Developer report certain information relating to any such transaction under this Agreement to the County Assessor within sixty (60) days after such transaction. Developer agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

4. COMPLIANCE WITH LAWS; REGULATORY APPROVALS

4.1. Compliance with Laws. At its sole cost and expense, the Developer shall comply with all Laws at all times throughout the Term. The Developer shall, promptly on request, provide the City with evidence of compliance with the Developer's obligations under this Section.

4.2. Regulatory Approvals.

(a) Developer Responsibility. Developer understands and agrees that the Subdivision and the construction and operation of the Housing Project requires Regulatory Approvals from Regulatory Agencies, including but not limited to the City's Arts Commission, Department of Public Works ("DPW"), Department of Building Inspection, Planning

Department, and other City departments, agencies, boards, and commissions acting in their regulatory capacity, and other non-City Regulatory Agencies. Developer is responsible for, and will use its best efforts to obtain at its sole cost, all needed Regulatory Approvals. Developer understands and agrees that (i) City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Project Site and not as a Regulatory Agency with certain police powers, (ii) neither City's execution of this Agreement nor any approvals given by the City under this Agreement will be deemed to imply that Developer will be able to obtain any required approvals from Regulatory Agencies that have jurisdiction over the Project Site, the Subdivision, or Construction and operation of the Housing Project, including the City acting in its regulatory capacity, (iii) City has made no representation or warranty that the necessary Regulatory Approvals to allow for the Subdivision, Construction and operation of the Housing Project can be obtained; and (iv) although the SFMTA is an agency of the City, SFMTA staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including SFMTA and/or other City officials acting in a regulatory capacity. By entering into this Agreement, City is in no way modifying or limiting the obligations of Developer to Construct and operate the Housing Project in accordance with all Laws. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the Subdivision or the approval, Construction, and operation of the Housing Project will be issued by the appropriate Regulatory Agency.

Without limiting the foregoing, Developer understands and agrees that City staff and executives have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval or for approval of the Subdivision or Ground Lease, and any such advocacy, promotion or lobbying will be done by Developer at Developer's sole cost and expense. Developer hereby waives any Losses against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of any Regulatory Agency to issue any required Regulatory Approval or approve the Subdivision.

(b) City Role. Developer will not seek any Regulatory Approval without the City Project Director's prior written consent, which will not be unreasonably withheld, conditioned or delayed except to the extent that the City has sole and absolute discretion in granting such consent under this Agreement. Throughout the Term, Developer will submit all applications and other forms of request for required Regulatory Approvals that have been consented to by the City Project Director on a timely basis and will consult and coordinate with the City Project Director in Developer's efforts to obtain the Regulatory Approvals. The City Project Director will provide Developer with its approval, conditional approval, or disapproval of Developer's proposal to seek a Regulatory Approval in writing on or before the tenth (10th) calendar day immediately following City's receipt of Developer's written request (the "**Regulatory Approval Review Period**"); provided that if the City Project Director determines that action requires the approval of the SFMTA Board of Directors or City's Board of Supervisors, then the City Project Director shall notify the Developer of that determination during the Regulatory Approval Review Period. In such event, the Regulatory Approval Review Period shall be automatically extended by another ninety (90) days and the City Project Director shall use reasonable efforts to promptly seek the necessary approval from the SFMTA Board of Directors or the Board of Supervisors.

If the City Project Director disapproves or conditionally approves any request under this subsection (b), then (i) such disapproval or conditional approval shall state the reasons therefor in writing and may recommend changes and make other recommendations, and (ii) Developer shall resubmit as expeditiously as is commercially reasonable given the purpose of the Regulatory Approval for which City approval is sought and the nature of the City's recommended changes or other recommendations. Developer shall continue making resubmissions until the earlier of (A) approval of the submissions, or (B) the later of (1) the time

specified in any conditional approval, or (2) the date specified in the Schedule of Performance, as either may be extended by the City Project Director.

If Developer has properly submitted a request for approval of a required Regulatory Approval under this subsection (b), but the City Project Director fails to respond within the Regulatory Approval Review Period (as may be extended pursuant to this Section), then Developer may submit a written notice (an “**Additional Regulatory Approval Notice**”) to the City Project Director requesting the City Project Director’s approval or disapproval. The Additional Regulatory Approval Notice must display prominently in at least 16 point font on the envelope enclosing such request and on the first page of such request, substantially the following: “**APPROVAL REQUEST FOR REGULATORY APPROVAL APPLICATION FOR POTRERO YARD HOUSING PROJECT. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL REQUIRE THE DIRECTOR OF TRANSPORTATION TO MEET WITH DEVELOPER WITHIN TEN (10) BUSINESS DAYS.**” If City Project Director fails to approve or disapprove the request within five (5) Business Days following receipt of the Additional Regulatory Approval Notice, then the Director of Transportation or a Director of Transportation delegee authorized to make the decision, shall meet with Developer at a mutually agreeable time within ten (10) Business Days of Developer delivering the Additional Regulatory Approval Notice and make a final decision to approve, conditionally approve, or disapprove of the submitted Regulatory Approval application at that meeting.

The City will cooperate reasonably with Developer in its efforts to obtain the Regulatory Approvals. However, Developer shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval if City is required to be a co-permittee, applicant or co-applicant under that Regulatory Approval or the conditions and/or restrictions in the Regulatory Approval could create any City obligations or could otherwise encumber, restrict or change the use of any of the Project Site or aspect of the Infrastructure Facility or the City’s fee interest in the Project Site unless in each instance, the City has previously approved, in the City’s sole and absolute discretion, such conditions or restrictions. No such approval by City shall limit Developer’s obligation to pay all the cost of complying with such conditions or restrictions.

(c) Costs and Compliance. Developer will bear, and will pay as they are incurred, all costs associated with (i) applying for and obtaining any necessary Regulatory Approval, and (ii) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions apply to the Housing Parcel, any other portion of the Project Site (to the extent approved by City), or require off-site improvements, removal, or other measures. Developer has the right to appeal or contest any condition in any manner permitted by law imposed on any such Regulatory Approval. Developer will provide the City with prior notice of any such appeal or contest and keep the City informed of such proceedings. Developer will pay or discharge any fines, penalties or corrective actions imposed as a result of Developer’s failure to comply with the terms and conditions of any Regulatory Approval subject to Developer’s right to appeal and contest such fines, penalties or corrective actions. No approval by the City under this Agreement will limit Developer’s obligation to pay all the costs of complying with any conditions or restrictions.

(d) Indemnity for Regulatory Approvals. Without limiting any other Indemnification provisions of this Agreement, Developer will Indemnify the City and the Indemnified Parties from and against any and all Losses which may arise in connection with Developer’s failure to comply with the terms and conditions of any Regulatory Approval required for the Subdivision or the Construction and Operation of the Housing Project.

4.3. Survival. The provisions of this Article will survive the expiration or earlier termination of this Agreement for a period of fifty-four (54) months following such expiration or earlier termination.

5. CONSTRUCTION OF INFRASTRUCTURE FACILITY; AS IS CONDITION OF THE PROJECT SITE.

5.1. Construction of Infrastructure Facility. Subject to City's or the IF Developer's right to terminate the Project Agreement under its terms, IF Developer and PNC are obligated to construct the Infrastructure Facility and achieve IF Substantial Completion on the terms and conditions of the Project Agreement and Implementation Agreement by June of 2030, as such date may be extended pursuant to the terms of the Project Agreement. Developer agrees that for the purposes of this Agreement, IF Substantial Completion shall be evidenced by the City's issuance of a Certificate of Substantial Completion (as defined in the Project Agreement) to the IF Developer. On or before the fifth (5th) Business Day after the City delivers written notice to Developer of the date City issued the Certificate of Substantial Completion to the IF Developer, Developer shall acknowledge that issuance by delivering its countersignature to that letter to City.

5.2. [Intentionally deleted]

5.3. Current and Future Uses of the Project Site. Developer acknowledges and understands that the City currently uses the Project Site as a transit facility, and the Parties anticipate construction of the Infrastructure Facility will commence in June of 2026 and reach substantial completion by June of 2030. If IF Substantial Completion occurs, Developer further acknowledges that the City will be operating a transit facility at the Infrastructure Facility before, during, and after any construction of the Housing Project.

5.4. As Is; Adverse Change. Developer acknowledges that the IF Developer, PNC, and their respective assigns, successors and contractors have the right to access the Housing Parcel under the terms and conditions of the Project Agreement and Implementation Agreement, and agrees that City shall have no obligation to prepare the Housing Parcel for any purpose whatsoever for the lease of the Housing Parcel and construction and operation of the Housing Project other than, if all the conditions precedent for the Close of Escrow are satisfied or waived by the benefitted Party, Delivering the Housing Parcel subject to the right of access of IF Developer, PNC and their respective agents and contractors but free of tenants and other occupants unless otherwise agreed to by Developer in writing prior to the Close of Escrow.

Subject to the provisions of this Section, Developer agrees to accept the Housing Parcel in its "**AS IS WITH ALL FAULTS**" condition on the date of Close of Escrow unless the Developer discovers a physical condition of the Housing Parcel between the Effective Date and the Close of Escrow that is not created by the acts or omission of the IF Developer, PNC, Developer, or their respective Agents or known to Developer prior to the Effective Date, and would materially adversely interfere with development or construction of the Housing Project for its intended uses (an "**Adverse Change**"), unless Developer elects to waive such Adverse Change and proceed to the Close of Escrow. Unless waived by the Developer, no Adverse Change shall be a condition precedent to Developer's obligation to Close of Escrow and accept Delivery of the Ground Lease. Notwithstanding the foregoing, the City will not under any circumstances be liable to the Developer for any monetary damages caused by an Adverse Change.

5.5. Independent Investigation by Developer. Developer acknowledges that it has been afforded a full opportunity to inspect City's records relating to conditions of the Project Site and review the Project Agreement, the Implementation Agreement, and the Infrastructure

Facility construction agreement, subject to any required approvals of the Infrastructure Facility construction contractor or their subcontractors or agents and any information that City cannot disclose under any Infrastructure Facility federal funding requirements. City makes no representation or warranty as to the accuracy or completeness of any matters contained in those City records, and Developer is not relying on those City records. All information contained in such City records is subject to the limitations set forth in Section 6.

Developer represents and warrants to City that Developer or its Affiliates have performed a diligent and thorough inspection and investigation of the Housing Parcel, either independently or through their own experts, including (i) the quality, nature, adequacy and physical condition of the Housing Parcel including the structural elements, foundation, and all other physical and functional aspects of the Housing Parcel; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Housing Parcel, including the soil and any groundwater (including the presence of asbestos or lead or other Hazardous Materials conditions); (iii) the suitability of the Housing Parcel for the Housing Project; (iv) the zoning, land use regulations, historic preservation laws, and other Laws governing use of or Construction on the Housing Parcel; (v) matters regarding conditions at the Housing Parcel disclosed in the RFP and the Project Agreement; (vi) the Project Agreement, Implementation Agreement, and the Infrastructure Facility construction agreement, and (vi) all other matters of material significance affecting the Housing Parcel and its development.

5.6. Disclaimer of Representations and Warranties. DEVELOPER AGREES THAT THE CLOSE OF ESCROW IS CONDITIONED ON IF SUBSTANTIAL COMPLETION OR THE SATISFACTION OF EACH OF THE EARLY DELIVERY CONDITIONS, AND CITY HAS NO OBLIGATION TO ENSURE IF SUBSTANTIAL COMPLETION OCCURS. IF THE CONDITIONS PRECEDENT FOR THE CLOSE OF ESCROW ARE FULLY SATISFIED OR WAIVED BY THE APPLICABLE PARTY, A LEASEHOLD INTEREST IN THE HOUSING PARCEL PURSUANT TO THE GROUND LEASE WILL BE DELIVERED BY CITY AND ACCEPTED BY DEVELOPER IN ITS AS IS WITH ALL FAULTS CONDITION. DEVELOPER REPRESENTS AND WARRANTS TO CITY THAT DEVELOPER HAS RECEIVED AND REVIEWED CITY'S RECORDS REGARDING THE PROJECT SITE AS OF THE EFFECTIVE DATE AND DEVELOPER OR ITS AGENTS OR ASSIGNS HAVE PERFORMED ALL DUE DILIGENCE NEEDED BY DEVELOPER TO DETERMINE CONDITION OF THE HOUSING PARCEL AS OF THE EFFECTIVE DATE. DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY NOR ANY OF THE OTHER INDEMNIFIED PARTIES HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE ABILITY TO ACHIEVE IF SUBSTANTIAL COMPLETION OR SATISFACTION OF EACH OF THE EARLY DELIVERY CONDITIONS, THE CONDITION IN, ON, UNDER, OR PERTAINING TO ANY PORTION OF THE HOUSING PARCEL, THE SUITABILITY OR FITNESS OF THE HOUSING PARCEL OR ITS APPURTENANCES FOR THE DEVELOPMENT, USE OR OPERATION OF THE HOUSING IMPROVEMENTS OR EXTERIOR IMPROVEMENTS FOR THE HOUSING PROJECT, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF ANY PORTION OF THE HOUSING PARCEL, THE ACCURACY OF CITY'S RECORDS, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO ANY PORTION OF THE HOUSING PARCEL OR THE PROPOSED HOUSING PROJECT.

Developer's Initials

5.7. Release. As a material condition to City's agreement to enter into this Agreement, as part of Developer's agreement to accept the Housing Parcel in its "As Is With All Faults" condition, Developer, on behalf of itself and its successors and assigns, is deemed to waive any right to recover from, and forever release, acquit and discharge, City and the other Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Developer may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Housing Parcel (including soil and groundwater conditions), including any Hazardous Materials in, on, under, above or about the Housing Parcel and the physical and environmental condition of the Infrastructure Facility, (ii) the suitability of the Housing Parcel for Construction and operation of the Housing Project, (iii) any applicable Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (v) goodwill, or business opportunities arising or lost at any time and from any cause, in, on, under, or about the Project Site, and (vi) any delay in or failure to achieve IF Substantial Completion, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties; provided, however, that the foregoing waivers or releases of claims do not extend to Losses to the extent caused by the sole negligence or willful misconduct of the Indemnified Parties.

Further, City would not be willing to enter into this Agreement without the agreement of Developer, on behalf of itself and its successors and assigns, to waive any right to recover from, and forever release, acquit and discharge, City and the other Indemnified Parties from any and all consequential, incidental or punitive damages, and Developer expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Developer or other waivers contained in this Agreement and as a material part of the consideration of this Agreement, Developer fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue the Indemnified Parties for such damages arising out of this Agreement regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Developer understands and expressly accepts and assumes the risk that any facts concerning the claims released, waived and discharged in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Therefore, with respect to the claims released, waived and discharged in this Agreement, Developer waives any rights or benefits provided by Section 1542 of the California Civil Code, which provides as follows:

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

Developer's Initials

Developer agrees that the releases, waivers, and discharges given in and/or contemplated by this Section 5.7 includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims regarding (i) all or any of the physical, geotechnical, and environmental condition in, on, under, above, or about the Housing Parcel (including soil and groundwater conditions), including any Hazardous Materials in, on, under, above or about the Housing Parcel

(including its soil and groundwater) and the physical and environmental condition of the Housing Parcel, (ii) the suitability of the Housing Parcel for Construction and operation of the Housing Project, (iii) applicable Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, (iv) damages by death of or injury to any Person or to property of any kind whatsoever and to whomever belonging, (v) goodwill, or business opportunities arising or lost at any time and from any cause, (vi) goodwill, or business opportunities arising or lost at any time and from any cause, in, on, under, or about the Housing Parcel, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, (vii) any delay in or failure to achieve IF Substantial Completion, and (viii) consequential, incidental or punitive damages. Accordingly, Developer hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section.

5.8. General Indemnification. Without limiting any Indemnity contained in any other agreement between the Parties, Developer will Indemnify the Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, (i) out of any injuries or death of any person or damage of any property occurring in, on or about the Housing Parcel arising from the performance of Developer or its Agents under this Agreement, including, but not limited to, any entry on or about the Housing Parcel; (ii) any failure by Developer or its Agents or Invitees, as applicable, in complying with all Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, and with the terms, covenants or conditions of this Agreement and the Regulatory Approvals; (iii) any inaccuracy in Developer's representations, warranties or covenants in this Agreement; and (iv) any fraud, criminal conduct, intentional misconduct, recklessness, bad faith, gross negligence, negligence or other culpable act or omission of Developer or its Agents.

Developer's Indemnification obligations are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Developer agrees to immediately defend the Indemnified Parties against any claims that are actually or potentially within the scope of the Indemnity provisions of this Agreement even if such claims may be groundless, fraudulent or false. The Indemnified Party against whom any claim is made which may be within the scope of the Indemnity provisions of this Agreement shall provide notice to Developer of such claim within a reasonable time after learning of such claim, and thereafter shall cooperate with Developer in the defense of such claim. Developer's obligation to defend shall arise at the time such claim is tendered to Developer by the Indemnified Parties and shall continue at all times thereafter until finally resolved; provided, however, any failure to provide such notice shall not affect Developer's obligations under any such Indemnity provisions except to the extent Developer is materially prejudiced by such failure. Notwithstanding anything to the contrary in the foregoing, Developer will not be required to Indemnify the Indemnified Parties if such Losses are caused solely and directly by the gross negligence or willful misconduct of any of the Indemnified Parties.

Developer's Indemnification obligations set forth in this Agreement and Developer's releases, waivers, and discharges made in this Agreement will survive the expiration or earlier termination of this Agreement or, if applicable, the Close of Escrow as to any acts or omissions occurring prior to such date.

5.9. Survival. The provisions of this Article will survive the expiration or earlier termination of this Agreement.

6. ACCESS BY DEVELOPER ON HOUSING PARCEL

6.1. Consent of IF Developer and PNC. If Developer wishes to enter the Housing Parcel prior to the Close of Escrow to perform non-invasive due diligence and inspection activities necessary to carry out Developer's obligations under this Agreement, Developer must (i) at its sole cost, obtain the prior written consent of PNC and the IF Developer (together, the "**PNC and IF Developer Consents**") and comply with the terms and conditions of those PNC and IF Developer Consents to the extent such entry is before IF Substantial Completion, and (ii) duly execute a license agreement for that entry from the City in City's then standard form (a "**Permit to Enter**"). If any such entry by Developer is between the IF Substantial Completion and the expiration of the Warranty Period, Developer shall obtain PNC and IF Developer Consents for such entry and comply with the terms and conditions of those PNC and IF Developer Consents to the extent required (if at all) under the Project Agreement. In making any entry on the Housing Parcel before Close of Escrow, Developer shall not interfere with any construction or other use of the Project Site by IF Developer, PNC or their agents, contractors and consultants at the time of such entry by Developer.

6.2. Consent of City. Any Developer entry on the Housing Parcel before the Close of Escrow for due diligence and inspection activities necessary to carry out Developer's obligations under this Agreement are subject to the following conditions:

- (a) Developer shall first obtain a Permit to Enter from City;
- (b) Such entry and access must not, in the City's reasonable judgment, materially interfere with any City uses of the Project Site or the rights of IF Developer or PNC; and
- (c) If the Housing Parcel is being occupied by City or otherwise under a Permitted Use Agreement or any other lease, license or other agreement that City executed with the Developer's consent pursuant to Section 1.5, Developer must use commercially reasonable efforts to avoid any material interference with the City's use or the applicable user's permitted use of the Housing Parcel.

6.3. Demolition, Excavation, or Construction Work. The Developer may not perform any invasive, demolition, excavation or construction work at the Housing Parcel without the express written approval of the City, which the City may give, condition, or withhold in its sole and absolute discretion. If the City grants the approval described in the foregoing sentence, the City will require the Developer to execute a modified Permit to Enter that permits such work and includes any additional insurance, bond, guaranty and indemnification requirements as the City reasonably determines are appropriate to protect its interests.

6.4. No Interference or Obstruction. In making any entry on the Housing Parcel under a Permit to Enter, the Developer shall not materially interfere with or obstruct (i) use of any portion of the Project Site by the City, IF Developer, or PNC, or any of their respective Agents, or Invitees or (ii) the conduct of any normal business operations at the Project Site at that time, including the Muni Operations.

6.5. Contractor as Co-Permittee. The City may require any contractor performing the work under a Permit to Enter to be a co-permittee.

6.6. High Voltage Lines. All entries by Developer or its Agents onto the Housing Parcel will be made only at mutually agreeable times and pursuant to the terms and conditions of the applicable Permit to Enter. Developer acknowledges that if the Project Site has active high voltage overhead lines and special clearance procedures at the time of its entry, then additional

authorizations will be necessary before Developer or its Agents can commence certain due diligence activities at the Housing Parcel. Developer is responsible for scheduling sufficient time to comply with these procedures and obtain these authorizations in order to timely commence and complete its due diligence investigations at the Housing Parcel.

7. DEVELOPMENT OF THE HOUSING PROJECT.

7.1. Predevelopment Work. By the applicable Performance Dates in the Schedule of Performance, Developer shall perform or cause to be performed, at its sole cost, all predevelopment work required to enable Developer to commence Construction of the Housing Project within thirty (30) days of the Close of Escrow (which shall be no later than the Outside Date) and (ii) in accordance with the Final Construction Documents, the Construction Contract, the Project Requirements, the Scope of Development, and the Project Construction Schedule. Such work includes, but is not limited to, the activities described in this Section.

7.2. Subdivision. Subject to the requirements of this Section, Developer is responsible for causing, at its sole cost, the Project Site to be subdivided into the IF Parcel and the Housing Parcel (as generally shown on the Depiction of Proposed Parcels) in compliance with all Laws.

(a) Dimensions. The Parties agree that (i) the dimensions of the IF Parcel must be sufficient to allow for the construction, operation and financing of the Infrastructure Facility and to allow for Muni operations after IF Substantial Completion, and (ii) the dimensions of the Housing Parcel must be sufficient to allow for the construction, operation and financing of the Housing Project. The Parties further agree that the exact dimensions and legal descriptions for the IF Parcel and Housing Parcel are subject to adjustment to comply with the requirements of the San Francisco Subdivision Code and all applicable Regulatory Agencies, and must be mutually approved by the Parties.

(b) Subdivision Application. Developer shall, at its sole cost, prepare all materials required by DPW for the Subdivision (collectively, the “**Subdivision Application**”). Developer shall first provide a draft Subdivision Application (“**Draft Subdivision Application**”) to the City for review and approval, acting in City’s proprietary interest as owner of the Project Site, on or before the Performance Date specified for such action. Within ten (10) days of receiving the Draft Subdivision Application from Developer, the City Project Director will advise Developer if the City Project Director agrees the Draft Subdivision Application is consistent with the Depiction of Proposed Parcels (subject to any of the adjustments specified in this Section) and the requirements of this Agreement and the Project Agreement. If the City Project Director does not make this finding for a Draft Subdivision Application, the City Project Director shall notify the Developer of such finding and the Developer shall promptly revise the Draft Subdivision Application to address the City Project Director’s concerns and submit that revised Draft Subdivision Application to the City Project Director for review.

If the City Project Director determines a Draft Subdivision Application delivered by Developer meets the Subdivision Application requirements of the foregoing paragraph, the City Project Director shall notify the Developer of such finding and the Developer shall promptly submit the City Project Director -approved Draft Subdivision Application to DPW for review on or before the Performance Date specified for such action. After such submission, the Developer shall pursue the approval of the Draft Subdivision Application consistent with the requirements of this Agreement. Developer shall copy the City Project Director on all correspondence between Developer and DPW with respect to the Draft Subdivision Application and the Subdivision, and shall not have any Draft Subdivision Application or other meeting on the Subdivision with DPW without the City Project Director and/or other City staff designated to assist in such matters, unless the City Project Director determines that additional City staff is not required for the meeting. If DPW requires Developer to submit a revised Draft Subdivision

Application or any additional Subdivision materials, Developer shall first obtain the City Project Director's prior written consent to that submission.

(c) Monthly Reports. On the tenth (10th) day of each month following Developer's submission of the Draft Subdivision Application to DPW in compliance with the requirements of the foregoing subsection (b), Developer will submit monthly reports to the SFMTA describing the work activity in the previous month with respect to the Draft Subdivision Application and achieving a final map that creates the IF Parcel and the Housing Parcel as separate legal parcels that conform to the requirements of this Agreement and the Project Agreement ("**Final Map**"), including submissions to the applicable City Regulatory Agencies, comments received, any delays encountered, and updated projections of when the Final Map will be achieved. Developer will continue to submit such monthly reports until recordation of the Final Map. Within five (5) Business Days after receiving each monthly report, the SFMTA will give notice to Developer of any SFMTA concerns regarding Developer's efforts to timely submit required materials and agreements and to respond to comments of DPW or any other City Regulatory Agency on prior submissions.

(d) SFMTA Participation. The SFMTA will assist Developer with Developer's efforts to prepare and submit the Draft Subdivision Application and achieve the Final Map as follows:

(i) The SFMTA shall request DPW to use diligent efforts to process the Draft Subdivision Application, provided that Developer acknowledges that although the SFMTA is an agency of the City, and SFMTA staff and executives have no authority or influence over DPW.

(ii) The SFMTA shall timely review the proposed and final Draft Subdivision Application and any other draft or revised materials or documents (including any required easement agreements for the Subdivision) required by DPW to effect the Subdivision and record the Final Map.

(iii) The SFMTA shall join Developer's Subdivision meetings with DPW, except to the extent the Parties mutually agree that the SFMTA does not need to join a meeting.

(iv) The SFMTA shall execute all required Subdivision materials that Developer submits to DPW and require the signature of the owner of the Project Site, unless the SFMTA authorizes Developer to sign any such materials on the SFMTA's behalf.

Notwithstanding anything to the contrary in this Section, the SFMTA's sole cost with respect to its Subdivision responsibilities shall be limited to staff time, with Developer bearing the full cost of preparing the Draft Subdivision Application, Final Map, and all other materials required by DPW to effect the Subdivision. Developer acknowledges that DPW will be reviewing and processing the Draft Subdivision Application at its sole discretion in its regulatory capacity and pursuant to applicable Laws and the SFMTA's actions with respect to the Subdivision, Draft Subdivision Application and Final Map pursuant to this Agreement is in City's proprietary capacity as owner of the Project Site. As further stated in Section 4.2(a), City makes no representations or warranties on the feasibility of achieving the Subdivision as contemplated in this Agreement, the processing of the Draft Subdivision Application or the approval of any Final Map.

(e) Effect of Subdivision. If a Subdivision Application is approved by DPW and City's Board of Supervisors, and the Final Map is recorded in the Official Records of San Francisco County, together with any other documents that DPW requires to be so recorded for

the Subdivision, all references to the “Project Site” in this Agreement will include the IF Parcel and the Housing Parcel.

7.3. Construction Documents.

(a) Definitions.

(i) “Construction Documents” means the Schematic Design, Preliminary Design Documents, Final Design Documents, structural design report, MMRP Plans, Preliminary Construction Documents, and Final Construction Documents. As used in this Agreement, “Construction Documents” does not mean any contracts between Developer and any contractor, subcontractor, architect, engineer or consultant.

(ii) “Design Criteria” means the following elements:

- (A) Site plan(s) at appropriate scale showing the buildings, streets, walks, Exterior Improvements, other open spaces for the Housing Project. All land uses shall be designated, and all site development details and bounding streets, points of vehicular and pedestrian access shall be shown.
- (B) All building plans and elevations at appropriate scale.
- (C) Building sections showing all typical cross sections at appropriate scale.
- (D) Floor plans.
- (E) Preliminary tenant improvement plans.
- (F) Preliminary exterior improvement plans.
- (G) Plans for public access areas showing details of features intended to be Constructed as part of the Housing Improvements, including but not limited to, walls, fences, railings, benches, lockers, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, trash containers, and other Exterior Improvements.
- (H) Outline specifications for materials, finishes and methods of construction.
- (I) Plans for interior and exterior signs.
- (J) Site and exterior and interior (for common areas only) lighting plans.
- (K) Material and color samples for exterior facades, public plazas and open space, and other public areas.
- (L) Roof plans showing any proposed mechanical and other equipment, vents, photovoltaic panels, satellite dish(es), antennae(s), and mechanical or elevator penthouses.

(M) Geotechnical, structural, and other engineering assessments and investigation reports.

(N) Utilities, placement and sources.

(iii) **“Design Materials”** means (A) a detailed updated construction budget, (B) pricing qualifications from the Housing Construction Contractor, (C) a detailed value engineering log, (D) a draft construction schedule, (E) a specifications manual, and (F) an updated financial proforma for the Housing Project that includes any revised hard and soft costs.

(iv) **“Final Construction Documents”** means all plans and specifications required under applicable Laws to be submitted with an application for the Site Permit, including, to the extent applicable, geotechnical, structural, and other engineering assessments and investigation reports, and a technical report summarizing construction objectives and methodology, operational requirements, project design criteria, and preliminary cost estimates. The Final Construction Documents must (A) be a final development of, be based on, and conform to the approved Preliminary Construction Documents, (B) incorporate conditions, modifications and changes required by City or DBI or for the approval of the Preliminary Construction Documents, (C) comply with the requirements of the draft Ground Lease (to the extent the Parties have reached mutual agreement to the form of Ground Lease at the time City reviews the Final Construction Documents) and Project Requirements, and (F) include all drawings, specifications and documents necessary for the Construction of the Housing Project in accordance with the Ground Lease.

(v) **“Final Design Documents”** means 100% design drawings and structural reports in sufficient detail and completeness to show that the Housing Project and the Construction of the Housing Project will comply with the Schematic Design, Scope of Development and the Project Requirements. The Final Design Documents will generally include, without limitation, the Design Criteria and Design Materials.

(vi) **“MMRP Plans”** means the plans required before Construction of the Housing Project under the MMRP.

(vii) **“Preliminary Construction Documents”** means the preliminary drafts (50%) of the plans and specifications required under applicable Laws to be submitted with an application for a site permit for the construction of the Housing Project, including, to the extent applicable, geotechnical, structural, and other engineering assessments and investigation reports, and a technical report summarizing construction objectives and methodology, operational requirements, project design criteria, and preliminary detailed construction pricing. The Preliminary Construction Documents must (A) comply with the Project Requirements and (B) include initial drawings, specifications and documents necessary for the Construction of the Housing Project in accordance with the Ground Lease (to the extent the Parties have reached mutual agreement to the form of Ground Lease at the time City reviews the Preliminary Construction Documents).

(viii) **“Preliminary Design Documents”** means 50% design drawings and structural reports in sufficient detail and completeness to show that the Housing Project and the Construction of the Housing Project will comply with the Schematic Design, Scope of Development and the Project Requirements. The Preliminary Design Documents will generally include, without limitation, the Design Criteria and Design Materials.

(ix) **“Schematic Design”** means Housing Project schematic designs that conform to the Scope of Development, are submitted by Developer and approved by City as specified in this Section, and include (a) perspective drawings sufficient to illustrate the Housing

Project, (b) a site plan at appropriate scale showing relationship of the Housing Project and its respective uses, designating public access areas, open spaces, walkways, loading areas, streets, parking, and adjacent uses (with adjacent existing and proposed streets, arcades and structures also shown), (c) building plans, floor plans and elevations at appropriate scale and in detail sufficient to describe the Housing Project, the general architectural character, and the location and size of uses, and (d) building sections showing all typical cross sections at appropriate scale and height relationships of those areas noted above. Notwithstanding any other provision of this Agreement to the contrary, no City approval of the Schematic Design under this Agreement is intended to evidence or be deemed to evidence the City's approval of the Preliminary Construction Documents or the Final Construction Documents.

(b) Construction Document Requirements.

(i) The Preliminary Construction Documents and Final Construction Documents must satisfy all of the following requirements (collectively, the “**Project Requirements**”): (A) substantially conform to the Scope of Development and the reference plan set for 100% Schematic Design submitted under the PDA and dated 4-12-2024 (“**Approved 100% SD**”) with respect to the Housing Project unless otherwise approved in writing by the City Project Director, which approval shall not be unreasonably withheld or conditioned; (B) comply with the requirements of this Agreement and the Ground Lease (to the extent the Parties have mutually agreed to the form of Ground Lease at the time of submittal); (C) not include any details that would keep the Housing Project from complying with the Compatibility Requirement, and (D) comply with all applicable Laws, including but not limited to San Francisco Environment Code Chapter 7, the SUD, the CUA, and the MMRP. The Parties acknowledge and agree the structural components to be shared by the Housing Project and the Infrastructure Facility in the Approved 100% SD, including a common basement, will not be required for the Construction Documents to be in substantial conformance with the Approved 100% SD.

(ii) The Construction Documents must be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California. A California licensed architect must coordinate the work of any associated design professionals, including engineers and landscape architects. A California licensed structural engineer must review and certify (by wet-stamp on the Construction Documents) all final structural plans, and certify (A) the structural support elements described in the Construction Documents are sufficient to support the Housing Project and (B) the Construction of the Housing Project as described in the Construction Documents will not directly damage the Infrastructure Facility.

(c) Submission of Construction Documents for Initial Review by City. Developer will prepare and submit the Construction Documents to the City Project Director for the City's review and approval in its proprietary capacity as owner of the Housing Parcel and as provided in the following subsection (d) on or before the applicable Performance Dates established in the Schedule of Performance. All submittals made in connection with the Final Construction Documents shall include reasonably detailed explanations and descriptions of the procedures and methods of Construction insofar as such procedures and methods materially affect the Infrastructure Facility. The Parties acknowledge that any element in the Construction Documents regarding the use of the right of way in the vicinity of the Housing Parcel will be reviewed by the SFMTA acting in its regulatory capacity (and not pursuant to this Agreement) for conformity with City regulations for work in the right of way, which are currently referred to as the “Blue Book” (see <https://www.sfmta.com/reports/construction-regulations-blue-book>) and/or the MMRP. The explanations and descriptions required by this subsection shall be prepared for and addressed to the City Project Director by Developer's architect and general contractor for the Housing Project or, when reasonably requested by City, a consultant with

proven expertise and experience in the matters described in this subsection and who is otherwise acceptable to City in its reasonable discretion.

(d) Scope and Effect of City Review of Construction Documents. The Construction Documents are subject to the City's review pursuant to this Agreement in its capacity as owner of the Housing Parcel. City's review of the Construction Documents under this Agreement will consider compliance with the Project Requirements. Developer shall bear full responsibility for the design, engineering, structural integrity, or fitness of the Housing Improvements for their intended purpose and ensuring the Housing Improvements will and do comply with all applicable Laws and the requirements of the Ground Lease, and City's review and approval of the Construction Documents under this Agreement shall not be deemed to be an implied warranty of such matters.

Except by mutual agreement with Developer, City will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously. If there is a disagreement between City and Developer as to whether a matter contained in a particular submittal has been approved previously or whether City is acting in a manner that is inconsistent with matters that it approved previously, City's reasonable judgment will apply in resolving the disagreement.

(e) Review Procedures.

(i) Role of City Staff and Consultants. City's review and approval of the Construction Documents and Construction Contract pursuant to this Agreement means and requires review and approval by City Project Director, with the advice and input of any staff or consultants designated to review them by the City Project Director ("**Staff**").

(ii) Method of City Action/Prior Approvals. As to the City's review and/or approval of any aspect of any Construction Document (except for Regulatory Approval changes to Construction Documents, which will be governed by Section 7.3(f)), the City Project Director will approve, disapprove or approve conditionally each such element in writing, on or before the tenth (10th) day (the "**CD Review Date**") immediately following approval by MOHCD of such submittal pursuant to the MOHCD Predevelopment Loan. If Developer has properly submitted each set of the applicable Construction Documents, but the City fails to respond by the applicable CD Review Date, then Developer may submit a written notice to the City requesting the City's approval or disapproval. The notice must display prominently in at least 16 point font on the envelope enclosing such request and on the first page of such request, substantially the following: "**APPROVAL REQUEST FOR CONSTRUCTION DOCUMENTS OF POTRERO YARD HOUSING PROJECT. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL OBLIGATE THE DIRECTOR OF TRANSPORTATION OR THEIR AUTHORIZED REPRESENTATIVE TO MEET WITH DEVELOPER TO RESPOND WITHIN TEN (10) BUSINESS DAYS.**" If City fails to approve or disapprove the request within five (5) Business Days following receipt of the notice, then the Director of Transportation or a Director of Transportation delegatee authorized to make the decision must meet with Developer at a mutually-agreeable time and approve or disapprove of the submitted Construction Document at that meeting.

(iii) Timing For Resubmission Following Disapproval/Conditional Approval. If City disapproves aspects of any submitted Construction Documents in whole or in part, City's written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If City conditionally approves aspects of any submitted Construction Documents, City's written conditional approval will state the reason or reasons and a time will be stated for satisfying the conditions. Developer will resubmit as

expeditiously as possible and City will approve or disapprove of such changes at the next Bi-Weekly Meeting. Developer may continue making resubmissions until such time as City approves the aspects of the submitted Construction Documents subject to the process set forth in this Section.

If City determines any element(s) in Construction Documents submitted for City's review would cause the Housing Project to fail to comply with the Project Requirements, City shall identify the non-compliant element(s) with specificity in its written notice of disapproval or conditional approval of the applicable Construction Documents to Developer. If Developer is not able to modify the Construction Documents to comply with the Project Requirements, then City shall have the right to terminate this Agreement due to that non-compliant element by delivering written notice of termination to Developer unless, at the time of City's review of the applicable Construction Documents, each of the following conditions are met: (i) Developer has already received an award of HCD funding for the Housing Project, (ii) City has already approved the Final Design Documents, and (iii) the non-compliant element materially conforms to a corresponding element in the Final Design Documents. Any termination shall be effective on the date specified in the termination letter, which shall be no earlier than the thirtieth (30th) day immediately following City's delivery of the termination notice.

(iv) Exterior Improvements. Developer acknowledges that any Exterior Improvements for the Housing Project not otherwise approved by City during City's review of any submitted Construction Documents will need City's prior approval before installation. If Developer does not obtain City's prior approval to all of the Exterior Improvements before the Close of Escrow, then the Ground Lease will require Developer to obtain City's prior review of the Exterior Improvements before installation to ensure they comply with the Compatibility Requirement and the requirements of the Ground Lease. Developer will provide to City the size, design, color, dimensions, text, materials, location, and method of installation of the Exterior Improvements to enable City to evaluate the proposed request for approval.

(f) Changes in Construction Documents. Developer will not make or cause to be made any material or substantial changes to any City-approved aspect of any submitted Construction Documents without City's express written approval. Developer shall notify City of any proposed changes to any City-approved Construction Document in writing. If City deems the proposed change to be material or substantial, it shall notify Developer and Developer must obtain City's approval to the proposed change through the review process specifies in Section 7.5(f) will apply to changes submitted by Developer under this Section 7.3(f). Developer will cooperate in submitting any materials reasonably required by City for its determination in whether a proposed change is material or substantial. City's determination of whether such changes are material or substantial will be conclusive.

(g) Conflict With Regulatory Approvals. City will not withhold its approval of any Construction Documents elements or changes required for any Regulatory Approval of those Construction Documents as long as the Housing Project will comply with the Project Requirements and all of the following have occurred:

- (i)** City receives written notice of the required change;
- (ii)** City is afforded at least thirty (30) days to discuss such element or change with the Regulatory Agency having jurisdiction of and requiring such element or change and with Developer's architect;
- (iii)** Developer cooperates fully with the Regulatory Agency having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design

modifications of the Housing Project, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to City may be achieved despite the imposition of such requirement; and

(iv) Any conditions imposed in connection with such requirements complies with Laws, other Regulatory Approvals, and the Project Requirements.

Developer and City recognize that the foregoing kind of conflict may arise at any stage in the preparation of the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of the Site Permit and any addenda to the Site Permit. Accordingly, time is of the essence when such a conflict arises. Both Parties agree to use their best efforts to reach a solution expeditiously that is mutually satisfactory to Developer and City.

7.4. Construction Contracts and Project Construction Schedules. The Developer shall submit a draft guaranteed maximum price contract (including any qualifications or clarifications) or a stipulated sum contract for the Construction of the Housing Improvements, which shall include all exhibits, a final specifications book, an allowance log, draft certificates of insurance for the Housing Construction Contractor and the Ground Lease tenant, subcontractor bid leveling analysis, bid books if requested by City, and a draft performance and payment bond and rider, and be consistent with the Final Budget and City-approved financing plan for the Housing Project (“**Draft Contract**”). Developer shall also submit a draft schedule for the Construction of that Housing Project (“**Draft Construction Schedule**”) to City for review on or before the applicable Performance Dates in the Schedule of Performance.

Each Draft Contract shall be in a form reasonably acceptable to City, and with a contractor reasonable acceptable to City and conform to the (i) Project Requirements, (ii) the applicable Draft Construction Schedule, (iii) the applicable City-approved Final Construction Documents, (vi) all Laws, (v) incorporate the applicable MMRP requirements, and (vi) the Local Hire Plan and Trainee Plan for the Housing Project. Each Draft Construction Schedule shall show, at a minimum, the dates for the Close of Escrow and construction financing for the Housing Project, the commencement of Construction of the Housing Project, and the substantial completion of Construction for the Housing Project, which shall be no later than the third (3rd) anniversary of the Close of Escrow.

The City Project Director shall provide the Developer with its written approval, disapproval, or comments to a Draft Contract or Draft Construction Schedule on the later date to occur of (A) ten (10) days of proper submission by Developer, and (B) ten (10) days of any approval of such submittal by MOHCD, to the extent such MOHCD approval is required under the MOHCD Predevelopment Loan or any other MOHCD loan documents for the Housing Project. If the City Project Director disapproves aspects of any submitted Draft Contract or Draft Construction Schedule in whole or in part, the City Project Director’s written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If the City Project Director conditionally approves aspects of any submitted Draft Contract or Draft Construction Schedule, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Developer will resubmit as expeditiously as possible and the City Project Director will approve or disapprove of such changes at the next Bi-Weekly Meeting. Developer may continue making resubmissions until such time as the City Project Director approves the aspects of a submitted Draft Contract or Draft Construction Schedule subject to the process set forth in this Section. A Draft Construction Contract approved by the City Project Director shall be the “**Construction Contract**” for the Housing Project and a Draft Construction Schedule approved by the City Project Director shall be the “**Project Construction Schedule**” for the Housing Project.

7.5. Site Permit. After obtaining the City's prior written consent to apply for a Site Permit pursuant to Section 4.2(b), Developer will submit a complete Site Permit application to DBI within a time adequate to obtain the Site Permit on or before the applicable Performance Date in the Schedule of Performance. The applications for the Site Permit and all addenda to the Site Permit must include the Final Construction Documents that have been approved by City in writing pursuant to Section 7.3.

7.6. Progress Meetings/Consultation. During the preparation of the Construction Documents, Draft Construction Contract, and Draft Construction Schedule for the Housing Project, City and Developer shall hold bi-weekly progress meetings (each, a "**Bi-Weekly Meeting**") with the City Project Director and/or any City staff and consultants designated by the City Project Director and the Developer staff and consultants designated by the Developer Project Director, as appropriate considering Developer's progress, to coordinate the Developer's preparation and submission of draft and revised Construction Documents, Construction Contract and Draft Construction Schedule to the City Project Director for review and the City Project Director's review of them. After each Bi-Weekly meeting, Developer will distribute meeting minutes that summarize key topics discussed at that meeting. City and Developer agree, and shall require their respective applicable staff and consultants, to additionally communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents, Draft Construction Contract, and Draft Construction Schedule to the City Project Director can be made and receive prompt and speedy consideration.

7.7. Damage and Destruction. If there is any fire, flood, earthquake or other casualty that damages or destroys any of the Housing Parcel or any of its improvements during the Term, the obligations of the Parties with respect to that event shall be governed by Section 5.4. If there is any fire, flood, earthquake or other casualty that damages or destroys the IF Parcel before the Close of Escrow, then the Parties shall meet and confer in good faith to determine whether it is commercially and practically feasible to proceed with the Housing Project in light of such casualty and the SFMTA's transit obligations. Following such good-faith discussions, the Parties shall either (a) agree to proceed with the Housing Project, including any mutually agreed modifications to this Agreement or the Housing Project as needed to accommodate the SFMTA's transit obligations, or (b) mutually agree to terminate this Agreement. Neither Party shall have the right to unilaterally terminate this Agreement as the result of such casualty.

7.8. Hazardous Materials. Developer acknowledges and agrees that its Affiliate performed investigations regarding the environmental condition of the Project Site prior to the Effective Date. If Developer wishes to perform additional investigations of the Housing Parcel before the Close of Escrow, it may do so after IF Substantial Completion or the satisfaction of all the Early Delivery Conditions at its sole cost; provided, however, that Developer must obtain a Permit to Enter and any required consents of the IF Developer and PNC, if applicable, to enter the Housing Parcel for that investigation pursuant to Section 6. As will be further detailed in that Permit to Enter, Developer shall be responsible at its sole cost for the remediation of any Hazardous Materials placed on the Housing Parcel by the Developer or its Agents or any disturbance to pre-existing conditions on the Housing Parcel caused by the Developer or its Agents through such investigation.

8. CITY APPROVAL OF FINANCING.

8.1. Developer Obligation to Obtain Financing. Developer's initial financing plans with its anticipated budget and proposed financing for the Housing Project of as of the Effective Date are attached as Exhibit E ("**Initial Financing Plan**"). The Close of Escrow cannot occur until after IF Substantial Completion or the satisfaction of each of the Early Delivery Conditions, and the Parties acknowledge and agree that the Initial Financing Plan is subject to price changes between the Effective Date and the Close of Escrow as Developer develops the Housing Project.

The Parties further acknowledge and agree that the financing sources and amounts identified in the Initial Financing Plan are contingent on eligibility requirements and third-party approvals and also subject to change.

During the Term, Developer shall use commercially reasonable efforts to pursue all financing (including, but not limited to, the financing sources for a Housing Project identified in its Initial Financing Plan) needed to develop, Construct, and operate the Housing Project with the affordability requirements described in Section 1.2 and in any then-existing funding agreements for the Project (including the MOHCD Predevelopment Loan and any other MOHCD loan agreements for the Housing Project) and the applicable requirements for the disposition of “exempt surplus property” under California Government Code Section 54220 *et seq.* Those commercially reasonable efforts shall include, but not be limited to, the following: (i) timely preparing and obtaining City approval to the Construction Documents in compliance with the requirements of Section 7.3, (ii) obtaining construction and operating cost estimates and bids for the Housing Project and updates to those estimates and bids, (iii) submitting comprehensive funding applications to the California Debt Limit Allocation Committee and the California Tax Credit Allocation Committee for the Housing Project that will be limited to rental residential units that are available to households with incomes up to 80% AMI, provided such application will only be submitted if there are City-approved Preliminary Construction Documents, (iv) submitting a comprehensive funding application to HCD for the Housing Project, provided such application will only be submitted if there are City-approved Final Design Documents, (v) pursuing other sources of funding to finance the construction and operation of the Housing Project, (vi) meeting and submitting appropriate Housing Project information with potential lenders and tax credit investors, and (vii) collaborating with City on funding sources or development approaches to close any funding gaps to Construct or operate the Housing Project.

8.2. Required Submittals.

(a) Progress Reports and Initial Financing Plan Revisions. The Developer must submit all reports to MOHCD required under its loan agreements with MOHCD for the Housing Project. Any revisions to an Initial Financing Plan require the City Project Director’s prior written consent, which shall not be unreasonably conditioned or withheld. Developer shall also submit a revised Initial Financing Plan with each Construction Document submitted to City for approval under Section 7.3 that reflects any revised hard or soft costs.

(b) Final Budget. No later than the applicable Performance Dates specified in the Schedule of Performance, the Developer shall submit the following to the City for its review and approval:

(i) A proposed final budget of total Construction and other development costs for the Housing Project (“**Proposed Budget**”) in accordance with (A) the Final Construction Documents for the Housing Project, (B) the City-approved Construction Contract, and (C) the Scope of Development. Each Proposed Budget shall identify all sources of funding for the Housing Project, be substantially in MOHCD’s Development & Operating Budget Proforma template for new affordable housing loans and include, but not be limited to, line items for all predevelopment costs, permits and fees, exactions, hard costs, architectural and engineering costs and other soft costs, marketing costs, financing costs, hard construction costs, insurance and bonding costs, furniture, fixtures and equipment costs, and costs of tenant improvements to be constructed by the Developer. Any Proposed Budget for a Housing Project approved by City in writing shall be the “**Final Budget**” for the Housing Project.

(ii) A statement and appropriate supporting documents certified by Developer to be true and correct and in form reasonably satisfactory to the City showing sources and expected uses of funds and sufficient to demonstrate that (A) the Developer has or will have

adequate funds to complete Construction of the Housing Project in accordance with the Final Budget and the requirements of the future Ground Lease, (B) such funds have been spent for uses described in the Final Budget or are committed and available for that purpose, (C) there are no conditions to funding other than standard and customary conditions, and (D) the funding documents contain no provisions requiring Developer to take any actions that that would conflict with its obligations under this Agreement or the Ground Lease or require revisions to the Project Agreement or Implementation Agreement.

(iii) With regard to all debt financing, a copy of a bona fide commitment or commitments, with no conditions other than standard and customary conditions (or as otherwise approved by City in its sole and absolute discretion) and no provisions requiring acts of the Developer prohibited in this Agreement or the Ground Lease (to the extent the Parties have agreed to the form of Ground Lease at the time of that commitment) or prohibiting acts of Developer required in this Agreement or the Ground Lease (to the extent the Parties have agreed to the form of Ground Lease at the time of that commitment), for the financing of that portion of the Final Budget intended to be borrowed by the Developer, certified by Developer to be a true and correct copy or copies thereof. The commitment or commitments shall be obtained from a bona fide lender (or lenders), and, if required by any construction lenders(s), shall include commitments for permanent financing. The Developer covenants and agrees to perform any and all conditions to funding in accordance with such commitments.

(iv) With regard to any low-income housing tax credit financing, a copy of the California Tax Credit Allocation Committee low-income housing tax credit allocation letter in the amount and type as specified in the proposed Final Budget, and a copy of the California Debt Limit Allocation Committee tax-exempt bond allocation that corresponds to that allocated tax credit amount.

The foregoing submissions required under this subsection (b) may be in substantially final form at the time of initial submission by Developer, but must be noted as such at the time of such submission and all changes to such submission thereafter must be resubmitted to City for approval with all additions and deletions clearly noted by the Developer. All such submissions must be in final form by no later than ten (10) days prior to the Close of Escrow.

8.3. Approval Process. Within twenty-one (21) days after the Developer's submittal of documents to City pursuant to Section 8.2, the City Project Director will notify the Developer in writing of City's approval or disapproval (including the reasons for disapproval) of any documents submitted to City pursuant to Section 8.2, provided that at least twenty-one (21) days before the date of any request for approval of a Final Budget for a Housing Project, the City Project Director shall have received Preliminary Construction Documents for the Housing Project in accordance with Section 7.3 in sufficient detail to allow the City to obtain a cost estimator's report if the City, in its sole discretion and at its sole cost and expense, determines to obtain such a report. If Developer has properly submitted documents hereunder, but the City Project Director fails to respond within that 21-day period, then Developer may submit a written notice to the City Project Director requesting the City Project Director's approval or disapproval. The notice must display prominently in at least 16 point font on the envelope enclosing such request and on the first page of such request, substantially the following: "APPROVAL REQUEST FOR BUDGET DOCUMENTS OF POTRERO YARD HOUSING PROJECT. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL OBLIGATE THE DIRECTOR OF TRANSPORTATION OR THEIR AUTHORIZED REPRESENTATIVE TO MEET WITH DEVELOPER TO RESPOND WITHIN TEN (10) BUSINESS DAYS." If City fails to approve or disapprove the request within five (5) Business Days following receipt of the notice, then the Director of Transportation or a Director of Transportation delegee authorized to make the decision must meet with

Developer at a mutually-agreeable time and approve or disapprove of the submitted Budget Documents at that meeting.

9. KEY PERSONNEL; TRANSFER AND SIGNIFICANT CHANGE.

9.1. Development Team. The “**Development Team**” shall be comprised of the following parties (each of which is a “**Development Team Member**”) performing the following roles: (i) Plenary Americas USA Ltd. as sole Equity Member and manager of Developer, (ii) Affordable Housing Developer, which will be performing the obligations described in the Dropdown LDDA, (iii) Arcadis, Inc., an Affordable Housing Developer contractor that is preparing the Schematic Design, Preliminary Design Documents, and Final Design Documents, and providing construction administration, and (iv) G&M Realty Ventures, an Affordable Housing Developer contractor providing construction management services. The Development Team Members will serve those respective roles for Developer’s performance of its obligations under this Agreement. City acknowledges and agrees that Developer plans to have the Development Team Members perform some of the Housing Project predevelopment work; provided, however, that Developer shall remain responsible for the full performance of its obligations under this Agreement. Developer must not make any changes to the Development Team or the roles assigned to each Development Team Member without the City’s prior written consent, which may be withheld in its sole discretion. If a Development Team Member notifies Developer that it is withdrawing from the Housing Project, Developer shall immediately notify City. If Developer and City do not mutually agree to the replacement for the withdrawing Development Team Member within twenty (20) Business Days of the withdrawal of that Development Team Member (the “**Development Team Selection Period**”), City shall have the right to terminate this Agreement by delivering written notice of such termination to Developer within fifteen (15) Business Days of the expiration of the Development Team Selection Period. If City timely delivers a termination notice to Developer under this Section 9.1, this Agreement shall terminate on the date of such delivery.

9.2. Key Personnel. In addition to the Development Team, the following persons will also be instrumental to the performance of Developer’s obligations under this Agreement (collectively, the “**Key Personnel**”):

For Developer: Chris Jauregui, Developer Project Executive
Sam Hull, Developer Deputy Project Executive

For Affordable Housing Developer: Jose Garcia, Project Executive
Seth Furman, Senior Project Manager
Todd Clayter, Senior Project Manager
Myrna Ortiz Villar, Project Manager

During the Term, Developer must retain the Key Personnel to implement the Developer’s obligations under this Agreement and to manage other Developer personnel working on that implementation. Except for any termination of employment, retirement, death, injury or other similar circumstances, Developer must not change any Key Personnel without City’s prior written approval, which shall not be unreasonably withheld or conditioned. Developer’s proposed replacement of any Key Personnel for any reason is subject to City’s prior written approval, which shall not be unreasonably withheld or conditioned. If Developer intends to replace any Key Personnel, it shall first notify City in writing of the proposed replacement, the reason for the proposed replacement, the person it proposes as a replacement, and certify that the

proposed replacement person complies with the requirements for the position that person would fill described in Exhibit F (a “**Proposed Replacement Notice**”). Within fifteen (15) Business Days of receiving a Proposed Replacement Notice, City shall notify Developer if it approves of the proposed replacement. If Developer and City do not mutually agree to the replacement for the withdrawing Key Personnel individual within twenty (20) Business Days of the withdrawal of that individual (the “**Key Personnel Selection Period**”), City shall have the right to terminate this Agreement by delivering written notice of such termination to Developer within fifteen (15) Business Days of the expiration of the Key Personnel Selection Period. If City timely delivers a termination notice to Developer under this Section 9.2, this Agreement shall terminate on the date of such delivery.

9.3. Project Directors.

(a) For Developer. _____ (“**Developer Project Director**”) will be the person responsible for managing Developer’s obligations and rights under this Agreement, being the main point of contact for ongoing communications and coordination with City, and managing Developer’s contractual rights and obligations with the Development Team Members. The Developer Project Director is also authorized to make decisions and bind Developer. Developer must obtain the prior written approval of City to any change in the Developer Project Director, which approval will not be unreasonably withheld.

(b) For City. _____ (“**City Project Director**”) will be the person responsible for managing City’s obligations and rights under this Agreement. The City Project Director is also authorized to make decisions and bind City, except as otherwise expressly set forth in this Agreement. City must give written notice to Developer of any change in the City Project Director.

(c) Communications. The City Project Director and the Developer Project Director will be the main points of contact for ongoing communications and coordination between City and Developer under this Agreement. The Developer Project Director must also keep the City Project Director fully informed on all matters concerning all work and activities by Developer pursuant to this Agreement and keep records of all material aspects, with [weekly] meetings on the status of the Performance Milestones.

9.4. Prohibition Against Transfer or Significant Change. Except for a Permitted Transfer, the Developer may not sell, convey, assign, transfer, alienate or otherwise dispose of all or any of its interest or rights in this Agreement, including, but not limited to, any right or obligation to acquire a leasehold estate in the Housing Parcel and develop the Housing Project, or otherwise make any contract or agreement to do any of the same (collectively, a “**Transfer**”), or permit a Significant Change to occur, without in each instance obtaining the City’s prior written approval, which may be given, withheld, or conditioned in the City’s sole and absolute discretion.

9.5. Request for City Approval to Transfer or Significant Change. Except for a Permitted Transfer, the Developer shall request City’s consent to a Transfer in writing, which shall be accompanied with (i) the form of assignment and assumption agreement for the proposed Transfer, which shall include a covenant of the transferee’s assumption of Developer’s obligations under this Agreement as to the Housing Parcel and Housing Project, satisfactory in form and substance to City, and effective as of the Close of Escrow, and (ii) evidence of the proposed transferee’s financial and operational capacity and development experience to satisfy the Developer’s obligations for the Housing Parcel and Housing Project under this Agreement and the Ground Lease. City has sole and absolute direction in approving the proposed transferee

The Developer shall request City's consent to a Significant Change in writing, which must be accompanied with evidence of Person that would have the power to direct or control or cause the direction or control of the management of the Developer or a material aspect of its business development has the experience and financial and operational capacity to satisfy the Developer's obligations under this Agreement and Ground Lease, if any. The Developer shall reimburse the City for its reasonable costs of reviewing a proposed Transfer or Significant Change within fifteen (15) days following written demand by City.

City's consent to any specific Transfer or Significant Change under this Section will not be a waiver of the City's right to require such consent for each and every other Transfer or Significant Change.

9.6. Permitted Transfer. City consents to the Developer's Transfer (the "**Permitted Transfer**") of its rights under this Agreement to lease and develop the Housing Parcel to PY Bryant as of the Effective Date under the Dropdown LDDA, provided such Transfer shall only remain effective on the Close of Escrow if all of the following conditions are met:

(A) There is no Developer Event of Default or a default that, with the giving of notice or the passage of time, or both, would constitute a Developer Event of Default as of the Close of Escrow;

(B) Neither PY Bryant nor any of its Affiliates are in default under any other agreement with City at the time of the Close of Escrow;

(C) The Dropdown LDDA has not been terminated and neither Developer nor PY Bryant are in default under the Dropdown LDDA; and

(D) The Close of Escrow occurs on or before the second (2nd) anniversary of IF Substantial Completion, unless that date is extended pursuant to Section 3.1 without City requiring the Developer to rescind the Permitted Transfer under Section 3.1(b).

9.7. Effect of Transfer, Permitted Transfer or Significant Change. If a proposed Transfer requires City's consent under this Article 9 and City consents to that proposed Transfer, it shall be effective as of the Close of Escrow as long as a fully executed assignment and assumption agreement between Developer and the proposed transferee to effect the Transfer, which shall be in the form approved by City, is delivered to City and remains in effect. City acknowledges and agrees that the Dropdown LDDA meets the requirements of this Section 9.7.

No Transfer (including a Permitted Transfer) or Significant Change will relieve the Original Developer or any other party from any obligations under this Agreement. Any Transfer, Permitted Transfer, or Significant Change that does not comply with this Article 9 will be void and, at City's option, will constitute a material default by Developer under this Agreement. If there is a Transfer, whether in violation of or in compliance with this Article 9, and the transferee under that Transfer defaults in the performance or observance of any of the terms of this Agreement, then City may proceed directly against the Original Developer without the necessity of exhausting remedies against that transferee.

As of the effective date of a Transfer, each transferee under that Transfer will assume substantially all obligations of Developer under this Agreement with respect to the design and development of the Housing Parcel and Housing Project under this Agreement in accordance with the applicable Transfer agreement (with PY Bryant's assumption of those obligations being as set forth in the Dropdown LDDA), and in each case will be liable jointly and severally with Developer for the performance of all of Developer's obligations as to the design and development of the Housing Parcel and Housing Project under this Agreement. City

acknowledges and agrees that as long as the Dropdown LDDA remains in effect, (i) Developer and PY Bryant intend to have PY Bryant perform the Developer obligations under this Agreement as specified in the Dropdown LDDA on behalf of Developer, and (ii) City shall accept the performance of such obligations by PY Bryant on behalf of Developer to the extent that performance complies with the requirements of this Agreement; provided, however, that nothing contained in this Agreement or the Dropdown LDDA shall relieve Developer from its obligations under this Agreement.

10. DEFAULTS; REMEDIES.

10.1. Developer Events of Default. Each of the following constitutes a “**Developer Event of Default**”:

(a) The Developer fails to use commercially reasonable efforts to develop and submit the Construction Documents or Construction Contract and obtain all Regulatory Approvals and financing needed for the Housing Project and such failure continues for ten (10) Business Days following written notice from City to Developer;

(b) The Developer fails to pay any amount required to be paid under this Agreement when due and such failure continues for fifteen (15) Business Days following written notice from City to Developer;

(c) The Developer fails to execute and deliver the Ground Lease or Advisory Services Agreement as needed for the Close of Escrow and/or does not accept Delivery of the Ground Lease or close the financing for the Construction of the Housing Project by the applicable Performance Date in the Schedule of Performance or the Project Construction Schedule, provided that all pre-Delivery conditions to Developer’s obligation to execute and deliver and/or accept Delivery of the Ground Lease have been satisfied, and such failure continues for a period of twenty (20) days after written notice from City;

(d) The Developer fails to comply with the MMRP requirements that apply to the Housing Parcel during the Term and fails to cure that non-compliance within fourteen (14) days following written notice from City. If such failure cannot reasonably be cured within that 14-day period, it shall not be a Developer Event of Default so long as the Developer commences to cure within that 14-day period and diligently and in good faith continues to cure the failure to completion;

(e) Any fraudulent act, misrepresentation or willful misconduct by Developer with respect to the Housing Project, the Housing Parcel, or this Agreement;

(f) Any of the representations, warranties or covenants made by Developer in this Agreement are not true in any material respect throughout the Term;

(g) Developer, its parent company, or their respective members or shareholders, are debarred or prohibited from doing business with any federal, state or local government agency;

(h) A voluntary or involuntary action is filed (i) to have Developer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization, arrangement or liquidation under any bankruptcy or insolvency law, or a general assignment by Developer for the benefit of creditors, or (ii) seeking Developer’s reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of Developer or any substantial part of Developer’s assets or any of the foregoing events occurs with respect to any of the members of

Developer and, in respect of any involuntary action, such action has not been dismissed within sixty (60) days of being filed;

(i) A writ of execution is levied on this Agreement and is not released within sixty (60) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Developer and that appointment is not dismissed within sixty (60) days;

(j) Any Transfer or Significant Change is made in violation of Article 9 without City's consent;

(k) Any termination of the Project Agreement resulting from a default by IF Developer or termination of the Implementation Agreement resulting from a default by PPC;

(l) Any uncured event of default beyond any applicable cure period by Developer under a Permit to Enter;

(m) As long as the Dropdown LDDA is effective, any uncured event of default by PY Bryant under the Dropdown LDDA or its loan agreements with MOHCD for the Housing Project;

(n) Except for the defaults described in (a) through (m), above, the Developer violates any other material covenant, or fails to perform any other material obligation to be performed by the Developer under this Agreement at the time such performance is due (including the expiration of any specified grace period), and such violation or failures continues without cure for more than twenty (20) days after written notice from the City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such 20-day period, if Developer does not within such 20-day period commence such cure, or having so commenced, does not continually prosecute such cure with diligence thereafter.

10.2. City's Remedies. On the occurrence of a Developer Event of Default, City has the remedies set forth below:

(a) City may terminate this Agreement on thirty (30) days' written notice to Developer (the "**Termination Notice**"), which shall include a summary of City's staff costs in performing its obligations under this Agreement between the Effective Date and the date of the Termination Notice.

(b) City may institute an action for specific performance.

(c) City may seek to enforce Developer's indemnity obligations under this Agreement.

(d) City may obtain copies and/or assignments of the Project Materials to which City is entitled.

(e) The remedies provided for in this Agreement are in addition to and not in limitation of other remedies including those provided at Law or in equity. The City is entitled to all other remedies permitted by law or at equity or under this Agreement, including without limitation, damages. Without limiting Section 10.5(c), the remedies provided for in this Agreement are in addition to and not in limitation of other remedies including, but not limited to, any remedies provided under the City Requirements.

(f) If City terminates this Agreement for a Developer Event of Default, it shall have the right to require Developer to assign all of its interest in the Dropdown LDDA to City, provided that City shall not be liable for any default by Developer under the Dropdown LDDA prior to such assignment.

10.3. City Events of Default. Each of the following constitutes a “City Event of Default”:

(a) Any of the representations, warranties or covenants made by City in this Agreement are not true in any material respect throughout the Term;

(b) City’s failure to deliver the Ground Lease when the conditions to Close of Escrow in City’s favor have been satisfied or waived by City, but only if such failure is in violation of this Agreement and continues for a period of twenty (20) days from the date of written notice of that failure from Developer.

(c) City’s failure to perform any other obligation required by this Agreement at the time such performance is due (including any applicable cure period provided for a failure to perform that obligation) and such failure continues for more than twenty (20) days of receiving written notice of the specific failure from Developer or, if the default is not susceptible of cure within 20 days, City fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time.

10.4. Developer’s Remedies. On the occurrence of a City Event of Default, Developer has the remedies set forth below:

(a) The Developer may terminate this Agreement on thirty (30) days’ written notice to City.

(b) The Developer may institute an action for specific performance.

(c) City will not be liable to Developer for monetary damages caused by any City Event of Default.

10.5. General.

(a) Institution of Legal Actions. Subject to the limitations contained in this Agreement, the applicable Party may institute legal action to cure correct or remedy any Developer Event of Default or City Event of Default, to recover damages for any Developer Event of Default, or to obtain any other remedy consistent with the terms of this Agreement. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each Party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum.

(b) Acceptance of Service of Process. If any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service on the City in such manner as may be provided by Law. If any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service on the Developer at the address provided for Developer in Article 15 or such other address as shall have been given to City by Developer under Article 15, or in such other manner

as may be provided by Law, and will be valid whether made within or outside of the State of California.

(c) Rights and Remedies Are Cumulative. Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law, in equity or by this Agreement, are cumulative and not in derogation of other rights and remedies found in this Agreement. The exercise by either Party of any one or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

(d) Nonliability of City Members, Officials and Employees. No member, official, commissioner or employee of the City will be personally liable to the Developer, or any successor in interest, for any City Event of Default or any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

10.6. Survival. The provisions of this Article 10 will survive the expiration or earlier termination of this Agreement.

11. FORCE MAJEURE.

11.1. Effect of Force Majeure. For the purpose of this Agreement, including but not limited to the Schedule of Performance and any Project Construction Schedule, and subject to the limitations in Section 11.5, neither the Developer, the City, nor any successor in interest (the “**Delayed Party**,” as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to its obligation under this Agreement if caused by a Force Majeure as long as the Delayed Party notifies the other Party of the cause or causes of such Force Majeure delay and claims an extension for that delay within fourteen (14) days after the beginning of that Force Majeure event. Except as otherwise set forth in Section 11.5, the time fixed for performance of any such obligation or satisfaction of conditions shall be extended by a period of time equal to the duration of the Force Majeure event.

11.2. Definition of Force Majeure. “**Force Majeure**” means events that cause delays in the Delayed Party’s performance of its obligations under this Agreement, or in the satisfaction of a condition to the other Party’s performance under this Agreement, due to causes beyond the Delayed Party’s control and not caused by the acts or omissions of the Delayed Party (excluding, in any case, a Delayed Party’s performance of the payment of money required under the terms of this Agreement), including: acts of nature or of the public enemy; war; invasion; insurrection; riots; any general moratorium in the issuance of any Regulatory Approval required for Construction of the Housing Project (but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by Section 11.4); fires; floods; tidal waves; epidemics; pandemics, City-wide shelter-in place orders, quarantine restrictions; freight embargoes; earthquakes; unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Project Site that would not have reasonably been discovered through due diligence prior to the Effective Date and that would actually delay or materially and adversely impair the Developer’s ability to Construct the Housing Improvements;

or any Litigation Force Majeure or other administrative appeals, litigation and arbitration relating to the Delivery of the Ground Lease. The following are excluded from the definition of Force Majeure: (1) Developer's failure to secure the financing needed to Construct or operate a Housing Project and (2) any event that does not cause an actual delay.

11.3. Definition of Litigation Force Majeure. "Litigation Force Majeure" means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party that challenges (a) the validity of any action taken by the City in connection with its approval, execution, delivery, performance or other action under this Agreement, the Project Agreement, or any other agreements executed by City in connection with the Project Site or any findings on which any of the foregoing actions are predicated; (b) Construction of the Housing Project; or (c) the failure of any Regulatory Agency to impose conditions to a Regulatory Approval or the validity of any other Regulatory Approval required in connection with Construction of the Housing Project. In the event of a Litigation Force Majeure, the Delayed Party will proceed with due diligence and, to the extent applicable, the Parties shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

Notwithstanding anything to the contrary contained in this Agreement, Litigation Force Majeure excludes any action or proceeding brought by an Affiliate of Developer or PY Bryant, any members or partners (or their respective Affiliates) of Developer or PY Bryant, any consultant of Developer or PY Bryant, or any other Third Party assisted by Developer or PY Bryant, directly or indirectly, in such action or proceeding. Performance by a Party shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the Delayed Party has become final and unappealable.

11.4. Permits. If the Developer is diligently proceeding to obtain the Site Permit as required by Section 7.5 and is diligently proceeding to obtain other necessary Regulatory Approvals for Construction of the Housing Project as required in this Agreement, including the submission of all materials required for the Site Permit and other Regulatory Approval applications to the appropriate regulatory City department, Force Majeure includes the Developer's inability to obtain the Site Permit or other Regulatory Approvals in a timely manner. With respect to such event of Force Majeure, time for Close of Escrow will be tolled for the period equal to the number of days a delay in issuing the Site Permit or other Regulatory Approvals directly results in the delaying of the Close of Escrow in accordance with the Schedule of Performance and Project Construction Schedule.

11.5. Limitations on Force Majeure Extensions. Under no circumstances shall the delay attributable to an event of Force Majeure or Litigation Force Majeure extend beyond twelve (12) months after the start of the event of Force Majeure or Litigation Force Majeure.

12. PROJECT MATERIALS.

If this Agreement terminates for any reason other than a City Event of Default or pursuant to Section 3.8(c), the Developer shall, within thirty (30) days after written demand from City and without cost to City, (a) deliver to City copies of all studies, applications, reports, permits, plans, architectural drawings, test results, and similar work product regarding the Housing Project or the physical condition of the Housing Parcel or any other portion of the Project Site and any existing Construction Documents in the possession of Developer, or Developer's Agents, architects, engineers, or consultants (or if not in the foregoing parties' possession, reasonably obtainable by Developer), or prepared for Developer, including electronic or AutoCAD files (collectively, the "Project Materials"), and (b) to the extent Developer is

authorized to do so, assign to City (i) all of Developer's existing rights and interest in the Project Materials, and (ii) all of Developer's rights under any Regulatory Approval; provided, however, in each case without any representation or warranty, express or implied, by Developer, as to the sufficiency, accuracy, completeness or compliance with Laws or any other matter whatsoever.

The City may use the Project Materials for any purpose whatsoever relating to the Project Site without cost or liability therefor to City or any other Person; provided, however, that City will release Developer and Developer's Agents, contractor, architect, engineer and other consultants from any Losses arising out of City's use of such Project Materials and Construction Documents except to the extent such contractor, architect, engineer or other consultant is retained by City for the Subdivision or development of the Housing Project and they agree to such continued liability.

Developer shall include in all contracts and authorizations for services pertaining to the planning and design of the Housing Improvements, an express agreement by the Person performing such services or granting such authorizations that City may use such Project Materials as provided in this Article 12 without compensation or payment from City if those Project Materials are delivered to City under the provisions of this Article 12, provided that City agrees (i) not to remove the name of the preparer of such Project Materials without the preparer's written permission, or (ii) to remove the name of the preparer of such Project Materials at the preparer's written request. If a third-party (i.e. non-City party or a party that is not the Project Material author) seeks to obtain and use the Project Materials assigned to the City, then such third-party will be required to negotiate appropriate and reasonable compensation to the Project Material author for the incremental value of the Project Material.

The provisions of this Article 12 will survive the expiration or earlier termination of this Agreement.

13. [Intentionally blank]

14. REPRESENTATIONS AND WARRANTIES.

14.1. Representations and Warranties of the Developer. The Developer represents and warrants as follows as of the Effective Date and as of the date of the Close of Escrow:

(a) Valid Existence; Good Standing. Plenary Potrero Housing LLC is a California limited liability company in good standing under the laws of the State of California. Plenary Potrero Housing LLC's sole manager and sole member is Plenary Americas USA Ltd., which (i) is an affiliate of Plenary Americas US Holdings Inc. and a corporation duly incorporated and validly existing under the laws of the State of Delaware, (ii) has made the necessary filings to operate and lease property in California, and (iii) is in good standing in, the State of California. Developer and Plenary Americas USA Ltd. have all requisite power and authority to own property and conduct their business as presently conducted. PY Bryant is a limited partnership duly organized and validly existing and is in good standing under the laws of the State of California.

(b) Business Licenses. The Developer and its manager have obtained all licenses required to conduct its business in San Francisco and the Developer, its sole manager, and its sole member are not in default of any fees or taxes due to the City and County of San Francisco.

(c) Authority. Developer and its manager have all requisite power and authority to execute, deliver and perform all of the terms and covenants of this Agreement and

the agreements contemplated hereby to be performed by the Developer, subject to the terms and conditions of this Agreement

(d) No Limitation on Ability to Perform. Neither Developer's nor its manager's formation documents, nor any contract, agreement, indenture, trust agreement, note, obligation, other instrument, or Law in any way prohibits, limits or otherwise affects the Developer's right or power to execute this Agreement or to enter into and perform all of the terms and covenants of this Agreement and the Ground Lease. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, Regulatory Agency or other Person is required for the due execution and delivery of this Agreement by Developer and Developer's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Developer or its manager before any court, governmental agency, or arbitrator that might materially and adversely affect the enforceability of this Agreement, the executed Ground Lease, if any, or any documents to which Developer and City are parties or the business, operations, assets or condition of Developer or its manager.

(e) Valid Execution. The execution and delivery of this Agreement by Developer has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms once executed.

(f) Defaults. The execution, delivery and performance of this Agreement by Developer (i) does not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Developer or its member or by which Developer's or its member's assets may be bound or affected, (B) any Law applicable to the Developer or its business, or (C) the formation documents of Developer or its manager, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance on the assets of Developer or its member, except as otherwise contemplated in this Agreement.

(g) Meeting Financial Obligations. There is no material adverse change in the financial condition of Developer or its manager and Developer and its manager are each meeting their current liabilities as they mature. No federal or state tax liens have been filed against Developer or its manager, and neither Developer nor any of its manager is in default or claimed default under any agreement for borrowed money. Neither the Developer nor its manager have filed a petition for relief under any Chapter of the U.S. Bankruptcy Code, and to the best of the Developer's knowledge, no involuntary petition naming the Developer or its manager as debtor has been filed under any Chapter of the U.S. Bankruptcy Code. There has been no event that has materially adversely affected the Developer's ability to meet its obligations under this Agreement.

(h) Warranty of Development Work. The Developer warrants to City that its work pursuant to this Agreement, including but not limited to the Subdivision and the preparation of the Construction Documents, Construction Contracts, Project Construction Schedules, Initial Budgets and Final Budgets, will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time they are performed so as to ensure that all performed work is correct and appropriate for the purposes contemplated in this Agreement.

14.2. City Representations and Warranties.

(a) Valid Existence; Good Standing. City is a municipal corporation created and validly existing under the laws of the State of California.

(b) Authority. City has the requisite power and authority to execute and deliver this Agreement and to perform all of the terms and covenants of this Agreement and the agreements contemplated hereby to be performed by City, subject to the terms and conditions of this Agreement.

(c) Valid Execution. The execution and delivery of this Agreement and the performance by City hereunder have been duly and validly authorized. When executed and delivered by City and the Developer, this Agreement will be a legal, valid and binding obligation of City.

(d) Defaults. The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by City under (i) any agreement, document or instrument to which City is a party or by which City is bound, (ii) any law applicable to City, or (ii) the City's Charter.

14.3. Survival. The representations and warranties in this Article 14 shall survive any expiration or earlier termination of this Agreement.

15. NOTICES.

All notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed properly delivered, given or served to the Parties at the following addresses when (i) registered, certified or express U.S. mail, postage prepaid and return receipt requested; (ii) sent by commercial courier (next business day delivery requested), charges prepaid with a delivery receipt; (iii) personally delivered when a delivery receipt is obtained; or (iv) email, provided the sender uses the receipt notice feature:

City: San Francisco Municipal Transportation Agency
1 South Van Ness, 7th Floor
San Francisco, CA 94103
Attn: Chris Lazaro
Email: Chris.lazaro@sfmta.com

With a copy to: Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Group
Re: Potrero Yard Modernization Project
Email: Carol.R.Wong@sfcityatty.org

Developer: Plenary Potrero Housing LLC
633 West Fifth Street, Suite 4975
Los Angeles, CA 90013
Attn: Stuart Marks
Re: Potrero Modernization Project
Email: Stuart.Marks@plenarygroup.com

With a copy to: Chris Jauregui
Potrero Neighborhood Collective LLC
633 West Fifth Street, Suite 4975

Los Angeles, CA 90013
Email: Chris.Jauregui@plenarygroup.com

and: PY Bryant Street Housing, LP
c/o MEDA
2301 Mission Street, Suite 301
San Francisco, CA 94110
Email: sfurman@medasf.org

Any notice of a City Event of Default or a Developer Event of Default must be sent by (a) personal delivery, commercial courier (next business day delivery requested), or by registered, certified mail or express mail (return receipt requested, with postage prepaid) to the mailing addresses above, and (b) email to the e-mail addresses above, with the sender using the receipt notice feature. All notices delivered, mailed or sent in compliance with this Article 15 shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable. Either Party may change its address for the purposes of this Article by giving prior written notice of the change to the other Party in the manner provided in this Article at least ten (10) days prior to the effective date of such change.

16. GENERAL PROVISIONS.

16.1. Cooperation and Good Faith. In furtherance, and not in limitation, of Developer's obligations under the terms of this Agreement, Developer covenants that Developer shall pursue all actions, obligations, undertakings and agreements for which it is responsible under this Agreement with diligence and in good faith, including without limitation, in connection with all submissions required under Article 7 and any revisions required thereunder, all obligations to seek Regulatory Approvals, the Site Permit and all Site Permit addenda, all obligations to seek financing commitments and to obtain the other documents and make the submissions required by Article 8, and Developer's covenant under Section 16.14.

16.2. Conflict of Interest. No member, official or employee of the City may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

16.3. Inspection of Books and Records. City, including its Agents, has the right at all reasonable times and from time to time to inspect the books and records of Developer in a location within San Francisco during regular business hours pertaining to Developer's compliance with its obligations under this Agreement, provided that City shall, to the maximum extent allowed by Law, keep confidential any such information which Developer reasonably and in good faith determines is proprietary and clearly and conspicuously so designates.

16.4. Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to the next Business Day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not Business Days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each required completion date in the Schedule of Performance.

16.5. Interpretation of Agreement.

(a) Exhibits. Whenever an “Exhibit” is referenced, it means an exhibit or attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

(b) Captions. Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the terms “including”, “include”, “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including California Civil Code Section 1654).

(e) Costs and Expenses. The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) Agreement References. Wherever reference is made to any provision, term or matter “in this Agreement,” “herein” or “hereof” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered section or paragraph of this Agreement or any specific subdivision of this Agreement.

16.6. Successors and Assigns. This Agreement is binding on and will inure to the benefit of the successors and assigns of City and Developer, subject to the limitations on assignment set forth in Article 9. Where the term “Developer,” or “City” is used in this Agreement, it means and includes their respective successors and assigns.

16.7. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of City and Developer and their successors and assigns, subject to the limitations on assignment set forth in Article 9. No other Person shall have or acquire any right or action based on any provisions of this Agreement.

16.8. Real Estate Commissions. Developer and City each represents that it engaged no broker, agent or finder in connection with this transaction.

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

16.10. Entire Agreement. This Agreement and all of its exhibits constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Agreement. No parol evidence of any prior draft of this Agreement, or of any other agreement shall be permitted to contradict or vary the terms of this Agreement.

16.11. Amendment. Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument duly executed by the Parties.

16.12. Governing Law. The Laws of the State of California shall govern the interpretation and enforcement of this Agreement.

16.13. Extensions by City. On the request of Developer except as otherwise specifically addressed in this Agreement, City, acting through the Director of Transportation, may, by written instrument, extend the time for Developer's performance of any term, covenant or condition of this Agreement or permit the curing of any default on such terms and conditions as it determines appropriate, including the time within which Developer shall agree to such terms or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Developer's obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement.

16.14. Further Assurances. The Parties agree to execute and acknowledge such other and further documents and take such other reasonable actions as may be necessary or reasonably required to effectuate the terms of this Agreement.

16.15. Relationship of Parties. The subject matter of this Agreement is a private development with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement shall be deemed to render City a partner in Developer's business, or joint venturer or member in any joint enterprise with Developer.

16.16. Severability. If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

16.17. No Waiver. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

16.18. Binding Effect. This Agreement and its terms and conditions shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and permitted assigns.

16.19. Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, partner, shareholder, director or agent of City or Developer will be personally liable to the other Party, its successors and assigns, in the event of any default or breach or for any amount which may become due to either Party, its successors and assigns, or for any obligation of a Party under this Agreement.

17. CITY REQUIREMENTS.

The following City requirements apply during the Term:

17.1. SFMTA Employment Training Program.

(a) **Trainee Hiring.** Within one hundred eighty (180) days of the Effective Date, Developer shall meet with the staff of the SFMTA Employment Training Program (“**Program**”) to discuss the number of professional service trainees that meet the trainee requirements described below that Developer must hire, and the times and for the activities for those trainees, during the Term, and the “**Trainee Plan**” shall mean the trainee requirements for the Housing Project that are mutually approved by Program staff and the Developer. Trainees may be obtained through the City’s One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source. The trainee’s commitment does not require that the trainee be used only for the Subdivision or design or financing of the Housing Project; the trainee may also be used on other Developer projects that may be appropriate for the trainee’s skill development in the areas designated for that trainee by Program staff.

(b) **Trainee Requirements.** The trainees must meet following requirements:

(i) The trainee must be hired by the party providing professional services for the Subdivision or the Housing Project.

(ii) No trainee may be counted towards meeting more than one contract requirement. For example, any trainee hired during the Term for the Subdivision or the design or financing of the Housing Project will not count toward the trainee hiring requirement for the Ground Lease.

(iii) A trainee must meet enrollment qualifications established under the City’s First Source Hiring Program (“**FSHP**”) as follows:

“Qualified” with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the FSHP.

“Economically disadvantaged individual” shall mean an individual who is either (i) eligible for services under the Workforce Investment Act of 1988 (29 U.S.C. 2801 et seq.), as determined by the San Francisco Private Industry Council; or (ii) designated “economically disadvantaged” by the FSHP administration, which means an individual who is at risk of relying on, or returning to, public assistance.

“On-the-job training” means the hiring party hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months (using the full-time or part-time definition of the employer hiring that trainee), with prior approval offering on-the-job training that allows the trainee to progress on a career path.

(iv) Before a trainee is hired, the Developer shall submit for the SFMTA’s approval a description and summary of training proposed for that trainee, along with the rate of pay for the position.

17.2. Local Business Enterprise Plan. The Developer must timely develop a program for utilizing Local Business Enterprises (as defined in Chapter 14B of the San Francisco Administrative Code) for the Housing Project that is consistent with the policy goals and purpose of Chapter 14B of the San Francisco Administrative Code to ensure participation by Local Business Enterprises and non-discrimination in the design, construction, and management of the Housing Project during the term of this Agreement and the Ground Lease (the “**LBE Plan**”). Within one hundred eighty (180) days of the Effective Date, the Developer must meet with City to commence LBE Plan discussions. The Developer must obtain the approval of City to the LBE Plan no later than the date specified for such approval in the Schedule of Performance. In addition, during the Term, Developer will strive to incorporate Local Business Enterprises participation in the performance of appropriate obligations under this Agreement, as specified by the City’s Contract Monitoring Division. If the Developer wishes to engage and receive credit for its use of Local Business Enterprises during the Term, it will need the prior written consent of City’s Contract Monitoring Division, which can be withheld in the sole discretion of City’s Contract Monitoring Division.

17.3. Non-Discrimination Requirements.

(a) **No Discrimination.** In the performance of this Agreement, Developer agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Subcontracts.** Developer shall incorporate by reference in all subcontracts the provisions of Article 131.2(a), (c)-(k) and (m), and Section 132.3 of the San Francisco Labor and Employment Code (copies of which are available at www.sfgov.org) and shall require all subcontractors to comply with such provisions. Developer’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Nondiscrimination in Benefits.** Developer does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration,

subject to the conditions set forth in Section 131.2(b) of the San Francisco Labor and Employment Code.

(d) Condition to Contract. As a condition to this Agreement, Developer shall execute the City's Declaration: Nondiscrimination in Contracts and Benefits form with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly the Human Rights Commission).

(e) Incorporation of Labor and Employment Code Provisions by Reference. The provisions of Articles 131 and 132 of the San Francisco Labor and Employment Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Developer shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Articles, including, but not limited to, the remedies provided in such Articles. Without limiting the foregoing, Developer understands that pursuant to Sections 131.2(h) and 132.3(g) of the San Francisco Labor and Employment Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Developer and/or deducted from any payments due to Developer.

17.4. Sunshine Ordinance. Developer understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Government Code Section 7920 *et seq.*), this Agreement and any and all records, information, and other materials submitted to City hereunder are subject to public inspection and copying unless exempt from disclosure under Law. Developer hereby acknowledges that City may disclose those records, information and other materials as required by Law.

17.5. Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the sale or lease of any land or building from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract, each member of Developer's board of directors, Developer's chairperson, chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the bid or contract, and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for this Agreement, and has provided the names of the persons required to be informed to City.

17.6. Conflicts of Interest. Through its execution of this Agreement, Developer certifies that it does not know of any facts that would constitute a violation of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, or Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and agrees to promptly notify City if Developer becomes aware of any such fact during the Term.

18. EFFECTIVE DATE.

The Effective Date of this Agreement is the last date of execution by the Parties as shown below.

19. DEFINITIONS.

“**Adverse Change**” is defined in Section 5.2.

“**Affiliate**” means: (i) a person that Controls or is Controlled by the first entity, or is Controlled by the same person that Controls the first entity; or (ii) if Developer is a natural person, any designated successor by trust, will, or court order following the first entity’s death or incapacity.

“**Affordable Housing Developer**” means Mission Economic Development Agency, a California nonprofit public benefit corporation, and Tabernacle Community Development Corporation, a California nonprofit public benefit corporation.

“**Agents**” means, when used with reference to either Party to this Agreement or any other Person, the members, managers, officers, directors, commissioners, employees, agents and contractors of that Party or other Person, and their respective heirs, legal representatives, successors and assigns.

“**Approved 100% SD**” is defined in Section 7.3(b)(i).

“**Board of Directors**” means the SFMTA Board of Directors.

“**Board of Supervisors**” means the City’s Board of Supervisors.

“**Business Day**” means any day that is not a Saturday or Sunday, a City public holiday, a State of California public holiday, or a federal public holiday.

“**City Conditions Precedent**” is defined in Section 3.5(a).

“**Close of Escrow**” means the execution and delivery of the Ground Lease and the delivery of leasehold estate in the Housing Parcel subject to the Ground Lease through Escrow by the City.

“**Construction**” means all new construction, replacement, rehabilitation, and demolition occurring on the Housing Parcel, or where applicable, off-site, pursuant to this Agreement and the Ground Lease. “**Construct**” will have a correlative meaning.

“**Construction Contract**” is defined in Section 7.3(a)4.

“**Construction Documents**” is defined in Section 7.3(a).

“**Control**” means the direct or indirect ownership of: (a) fifty percent (50%) or more of each class of equity interests in the entity; or (b) fifty percent (50%) or more of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the entity or otherwise has the right to direct or cause the direction of substantially all of the management and policies of the entity.

“**Developer Conditions Precedent**” is defined in Section 3.6(a).

“**DBI**” means City’s Department of Building Inspection.

“Deliver” or “Delivery” means execution of the Ground Lease and delivery through Escrow by City to Developer, of a leasehold estate in the Housing Parcel subject to the Ground Lease.

“Director of Transportation” is defined in Section 1.2.

“Dropdown LDDA” is defined in Section 3.1(a).

“Effective Date” is defined in Section 2.

“Environmental Laws” means any Laws relating to Hazardous Materials (including its investigation, handling, release, or remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Project Site.

“Equity Member” means any Person that has the power to direct or control or cause the direction or control of the management of the Developer or a material aspect of its business.

“Equity Transfer” means any assignment, mortgage, encumbrance, hypothecation, conveyance, sale, or other transfer of equity interest in the Developer.

“Expiration Date” is defined in Section 2.

“Exterior Improvements” means any improvements, furnishings, fixtures, or equipment located in the exterior areas of the Housing Parcel (whether public access or not and including the roof) and/or located in the public access areas of the buildings, which may include mechanical equipment, photovoltaic panels, satellite dishes, antennae and other communication equipment, public art, bollards, flower baskets, benches, tables, chairs, umbrellas, heaters, railings, gates, trash receptacles, cleats, signs, kiosks, flagpoles, canopies, awnings, landscaping, planter boxes, light poles, lighting fixtures, fountains, ticket booths, bicycle racks, plaques, markers, tents, models, other street furniture, and paving or other surface treatments.

“Event of Default” means a City Event of Default and/or a Developer Event of Default.

“Force Majeure” is defined in Section 11.2.

“Hazardous Materials” means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos containing materials, presumed asbestos containing material, whether or not part of the structure of any existing improvements on the Project Site or the Infrastructure Facility, any improvements to be constructed on the Project Site by or on behalf of Developer, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

“Housing Improvements” mean all buildings, structures, fixtures and other improvements to be erected, built, renovated, rehabilitated, restored, placed, installed or constructed on or within the Housing Parcel on or after the commencement of the Ground Lease, as further described in the Scope of Development and elsewhere in this Agreement.

“Housing Project” is defined in Recital C and includes all physical construction on the Housing Parcel (and off-site where so designated in the Scope of Development) and all buildings, structures, fixtures and other improvements erected, built, renovated, rehabilitated, restored, placed, installed or constructed on or within the Housing Parcel, as further described in the Scope of Development and elsewhere in this Agreement.

“Indemnified Parties” means City, including all of its boards, commissions, departments, agencies and other subdivisions, including the SFMTA, all of the Agents of the City, and their respective heirs, legal representatives, successors and assigns, and each of them.

“Indemnify” means indemnify, protect, defend and hold harmless. **“Indemnification”** and **“Indemnity”** have correlative meanings.

“Initial Financing Plan” is defined in Section 2.

“Invitees” means, when used with reference to either Party to this Agreement or any other Person, the customers, patrons, invitees, guests, members, licensees, assignees, tenants and subtenants of that Party or other Person, and their respective heirs, legal representatives, successors and assigns.

“Laws” means all present and future applicable laws, ordinances, rules, regulations, permits, codes, authorizations, orders and requirements, including the SUD, CUA, and related approvals, whether or not foreseen or unforeseen, or in the contemplation of the Parties, which may affect or be applicable to the Project Site or any part of the Project Site (including use of the Project Site and the buildings and improvements on or affixed to the Project Site), including all consents or approvals (including the Regulatory Approvals) required to be obtained from or issued by, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments (including City), the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Project Site or any part thereof, the use thereof and of the buildings and improvements thereon; and similarly the phrase **“Law”** shall be construed to mean the same as the above in the singular as well as the plural.

“Lease Memorandum” means the memorandum of the Ground Lease that is suitable for recordation in the Official Records and mutually approved by the parties.

“Litigation Force Majeure” is defined in Section 11.3.

“Loss” or **“Losses”** means any and all claims, demands, losses, liabilities, damages (including foreseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including reasonable Attorneys’ Fees and Costs, and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

“MOHCD” is defined in Section 1.2.

“MOHCD Predevelopment Loan” is defined in Section 1.2.

“MMRP” is defined in Recital H.

“Muni Operations” means any and all services, operations, facilities and vehicles of every kind and nature in connection with the delivery of Muni public transit service.

“Non-Developer Assignee” means PY Bryant, a PY Affiliate, and any party to whom Developer has assigned its right to lease the Housing Parcel pursuant to this LDDA under a City-approved Transfer.

“Official Records” means the official records of the City and County of San Francisco.

“Person” means any individual, partnership, corporation (including any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

“Permitted Title Exceptions” is defined in Section 3.8.

“Plenary Americas USA Ltd.” means Plenary Americas USA Ltd., a Delaware corporation that is an affiliate of an affiliate of Plenary Americas US Holdings Inc.

“Program” is defined in Section 17.1(a).

“Project Requirements” is defined in Section 7.3(b).

“PY Bryant” is defined in Section 3.1(a).

“Regulatory Agency” and **“Regulatory Agencies”** means any local, regional, state or federal governmental agency or political subdivision having jurisdiction over the Project Site.

“Regulatory Approval” means any authorization, approval, endorsement, amendment of any existing plans, or permit required by any Regulatory Agency to construct or operate the Housing Project.

“Schematic Design” is defined in Section 7.3(a)(x).

“Scope of Development” is defined in Section 1.2.

“Significant Change” means any Equity Transfer, transfer of an interest (direct or indirect) in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of the Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member may constitute a Change in Control of the Developer if such Equity Member possesses, immediately prior to such Change in Control, the power to direct or control or cause the direction or control of the management of the Developer. Notwithstanding the foregoing, the following shall not constitute a Change in Control:

(a) a change in possession of the power to direct or control the management of the Developer or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) an upstream reorganization or transfer of indirect interests in the Developer so long as no change occurs in the entity with ultimate power to direct or control or cause the direction or control of the management of the Developer;

(c) a change in possession of the power to direct or control the management of the Developer or a material aspect of its business due solely to a bona fide transaction involving a beneficial interest in the ultimate parent organization of an Equity Member (but not if the Equity Member is the ultimate parent organization) if the references, experience or financial statements of the ultimate parent organization were not considered or evaluated in the statement of qualifications or proposal, provided, however, that this exception shall not apply if at the time of the transaction the transferee is suspended or debarred from bidding, proposing or contracting with the City or any federal or State department or agency, or is subject to a suspension or debarment proceeding;

(d) an Equity Transfer, where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer; or

(e) a transfer of interests (i) between managed funds that are under common ownership, management or control or (ii) by an Equity Member to a fund, investment vehicle or other entity managed by or under common control of such Equity Member, except, in each case, a change in the management or control of a fund, investment vehicle or other entity, as applicable, that manages or controls; and

(f) the exercise of minority veto or voting rights (whether pursuant to applicable Law, by the Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of the Developer, provided that if such minority veto or voting rights are exercised pursuant to shareholder or similar agreements, City received copies of such agreements on or before the date of the Agreement.

"Target Close Date" is defined in Section 3.5(a).

"Tax Credit Notice Date" means the date that City receives written notice from Developer to confirm the California Tax Credit Allocation Committee has allocated low income housing tax credits for the Housing Project.

"Title Company" is defined in Section 3.4.

"Title Defect" is defined in Section 3.8(b).

"Trainee Plan" is defined in Section 17.1(a).

"Transfer" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, or other transfer any of Developer's rights under this Agreement; (b) any Person other than Developer claims a right under this Agreement; (c) if Developer is a corporation, limited liability company, partnership or similar entity and is not traded on a nationally recognized security exchange, any change in Control of Developer (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any assignee, or other Transferee of Developer's interest in this Agreement is sold, assigned, encumbered, or otherwise Transferred.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the San Francisco Municipal Transportation Agency

By: _____
Julie Kirschbaum
Director of Transportation

Date: _____

San Francisco Municipal Transportation Agency
Board of Directors
Resolution No: _____
Adopted: _____
Attest:

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DAVID CHIU, CITY ATTORNEY

By: _____
Carol Wong
Deputy City Attorney

DEVELOPER:

PLENARY POTRERO HOUSING LLC

By: _____
Brian Budden
President

By: _____
Stuart Marks
Vice President

EXHIBIT A

Property Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

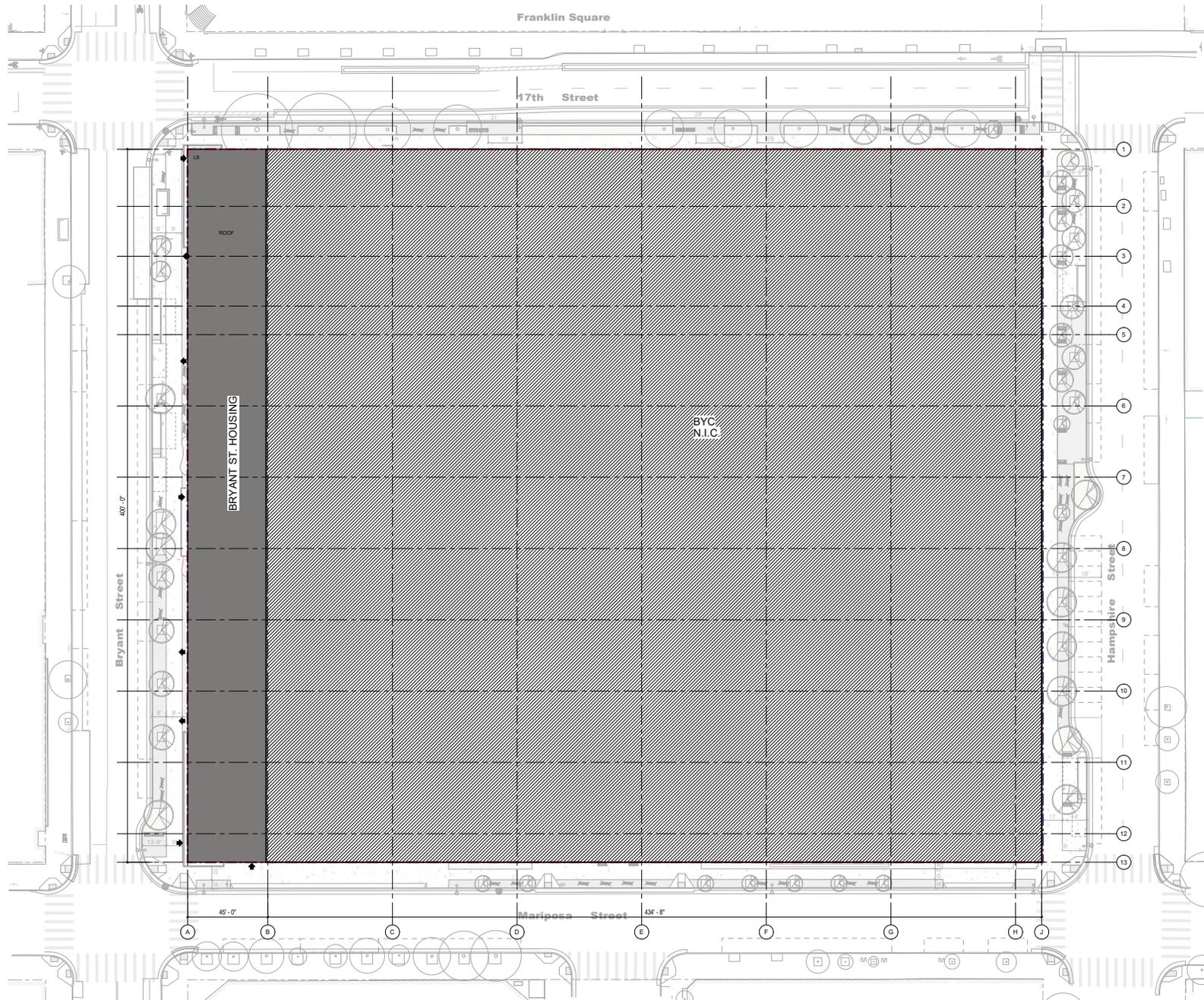
All that real property bound on the West by Bryant Street; on the North by 17th Street; on the East by Hampshire Street and on the South by Mariposa Street.

Being New Potrero Block No. 41; New Potrero Block 48 and a portion of York Street, closed November 20, 1939 by Resolutions 652, 708 and 760.

APN: Lot 001, Block 3971

EXHIBIT B

Depiction of Proposed Parcels



1 PARCEL MAP
A1000 Scale: 3/64" = 1'-0"

CLIENT

Client Name



49 SOUTH VAN NESS AVE
SUITE 1600
SAN FRANCISCO, CA 94103

COPYRIGHT

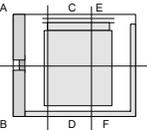
The design and drawings are the property of the client. No part of this document may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the consultant.

Arcadis, A California Partnership

ISSUES	DESCRIPTION	DATE
1	Schematic Design	2024-11-29

CONSULTANTS



SEAL

PRIME CONSULTANT



100 Montgomery St., Suite 1000
San Francisco, CA 94102, USA
Tel: +1 415 774 9000
www.arcadis.com

PROJECT

POTRERO BRYANT STREET
Project Address
City/Province/State
Postal/ZIP Code

PROJECT NO:
Project Number

DRAWN BY: Author **CHECKED BY:** Checker
PROJECT MGR: Designer **APPROVED BY:** Approver

SHEET TITLE
SITE PLAN

SHEET NUMBER	ISSUE
A1000	1

27/10/2024 10:47:42 PM

Arcadis (United States) - Potrero Street Rehabilitation Project (S2024000000) - Drawings - SDF1001 (1 of 7) Rev. A, 10/24/2024

EXHIBIT C
Schedule of Performance

Performance Milestone	Performance Date	Actual Date	Party Responsible	Notes
Draft of Advisory Services Agreement submitted to City for review*	June 30, 2026		Developer	
Review of Advisory Services Agreement	July 30, 2026		City	30 days after submittal
Finalize Advisory Services Agreement	August 29, 2026		Developer	30 days after City review
Meet with SFMTA Employment Training Program staff*	September 30, 2026		Developer	
Meet with SFMTA to discuss Draft LBE Plan*	September 30, 2026		Developer	
Open Escrow*	December 31, 2028		Developer	
Executed GC Preconstruction Services Agreement submitted to City*	March 31, 2029		Developer	
Draft Subdivision Application submitted to City for review*	March 31, 2029		Developer	
Review of Draft Subdivision Application	April 10, 2029		City	10 days after submittal
Subdivision Application Submission to SF Public Works	June 30, 2029		Developer	80 days after City review

Performance Milestone	Performance Date	Actual Date	Party Responsible	Notes
Submission of Revised 100% Schematic Designs (SDs)*	December 31, 2029		Developer	
Review of Revised 100% SDs	January 31, 2030		City	10 days after approval of such submittal by MOHCD (30 days total)
Submission of 100% SDs to Civic Design Review - Phase 1: Schematic Design	June 30, 2030		Developer	If necessary; review and approval subject to Civic Design Review Committee
Subdivision Process Completed (Approval)	June 30, 2030		SF Public Works	Completed Subdivision contingent on SF Public Works review, processing, and approval time
Submission of Draft 50% Design Development (DDs)*	June 30, 2030		Developer	150 days after City approval of Revised 100% SDs
Review of 50% DDs	August 31, 2030		City	10 days after approval of such submittal by MOHCD (30 days total)
Draft Site Permit Application submitted to City for review*	September 30, 2030		Developer	30 days after City approval of 50% DDs
Review of Draft Site Permit Application	October 10, 2030		City	10 days after submittal

Performance Milestone	Performance Date	Actual Date	Party Responsible	Notes
Submission of 100% Design Development (DDs)*	December 31, 2030		Developer	120 days after City approval of 50% DDs
Review of 100% DDs	January 31, 2031		City	10 days after approval of such submittal by MOHCD (30 days total)
Submission of Initial Financing Plan (with 100% DDs estimated pricing)*	March 31, 2031		Developer	60 days after City review of 100% DDs
Review of Initial Financing Plan	April 30, 2031		City	10 days after approval of such submittal by MOHCD (30 days total)
Submission of 50% Construction Documents (CDs)	May 31, 2031		Developer	120 days after City approval of 100% DD
MOHCD Preliminary Gap Commitment Letter	June 15, 2031		MOHCD	15 days prior to HCD AHSC application submission.
Submission of 100% DDs to Civic Design Review - Phase 2: Design Development	June 30, 2031		Developer	If necessary; review and approval subject to Civic Design Review Committee
Review of 50% CDs	June 30, 2031		City	10 days after approval of such submittal by MOHCD (30 days total)

Performance Milestone	Performance Date	Actual Date	Party Responsible	Notes
HCD Application	June 30, 2031		Developer/City	MHP,AHSC, or similar HCD applications require MOHCD Preliminary Gap Commitment Letter, and 100% DDs with associated pricing. Awards expected to be announced by Q3 2031; Dependent on HCD deadlines
CDLAC Application	September 30, 2031		Developer	Next Round Deadline after HCD Award; minimum design required is 50% CDs
TCAC Application	September 30, 2031		Developer	Next Round Deadline after HCD Award; minimum design required is 50% CDs
Initial Draft of Ground Lease for Developer Review	September 30, 2031		City	
Review of Ground Lease	October 15, 2031		Developer	15 days after City draft
Submission of Proposed Development Budget	October 15, 2031		Developer	15 days after TCAC application
Review of Proposed Development Budget	October 25, 2031		City	5 days after approval of such submittal by MOHCD (10 days total)

Performance Milestone	Performance Date	Actual Date	Party Responsible	Notes
Submission of 75% CDs & Cost Estimate	Oct. 31, 2031		Developer	120 days after City approval of 50% CDs
Review of 75% CDs	Nov. 20, 2031		City	10 days after approval of such submittal by MOHCD.
City & Developer Agree to Ground Lease	Nov. 30, 2031		City/ Developer	30 days prior to TCAC award
Submission of 75% CDs to Civic Design Review - Phase 3: Construction Documents	Nov. 30, 2031		Developer	If necessary; review and approval subject to Civic Design Review Committee
Award of TCAC	December 31, 2031		State	About 100 days after TCAC Application, dependent on TCAC award announcement date; assumes no appeals which could prolong timeline
Submission of Target Closing Date Notice	January 5, 2032		Developer	5 days after TCAC award
Civic Design Review - Post-Phase 3 Review	March 30, 2032		Developer	If necessary; review and approval subject to Civic Design Review Committee

Performance Milestone	Performance Date	Actual Date	Party Responsible	Notes
City final approval of Ground Lease	March 31, 2032		MTAB & BOS	This must occur prior to 90 days after TCAC award and 90 days before the Outside Date
Submit final 100% Construction Documents (CDs)	March 31, 2032		Developer	90 days after TCAC award
Review of 100% CDs	April 10, 2032		City	10 days after approval of such submittal by MOHCD
Submission of Draft GC Contract to City	April 30, 2032		Developer	120 days after TCAC award
Submission of Draft Construction Schedule to City	April 30, 2032		Developer	120 days after TCAC award
Submission of Draft Appraisal	May 31, 2032		Developer	150 days after TCAC award
Approval of MOHCD Gap Financing Loan	May 31, 2032		MOHCD Loan Committee	30 days before Close of Escrow
Property Management LOI - Pursuant to MOHCD Gap Loan Conditions	May 31, 2032		Developer	150 days after TCAC award
Close of Escrow	June 30, 2032		Developer	Outside Date: Two (2) years after Substantial Completion of IF. Subject to change if Substantial Completion of IF is changed/adjusted

* Indicates a Mandatory Performance Milestone per Section 1.3. If a Party other than the Developer extends its review or approval period beyond the Performance Dates herein for a Mandatory Performance

Milestone submitted by the Developer (e.g., City review), then any subsequent Mandatory Performance Milestone that is dependent on that review or approval will be extended on a day-for-day basis to reflect such delay. Any extension of a Mandatory Performance Date for reasons other than the foregoing must be requested by Developer through a Request for Changed Mandatory Performance Date in accordance with Section 1.3. Developer acknowledges that the Outside Date may only be extended per Section 3.1. Developer shall use commercially reasonable efforts to meet all other Performance Milestones (i.e., those without an asterisk).

Actual Date column to be tracked by Developer throughout Lease Disposition and Development Agreement.

For City review, Performance Dates herein assume no SFMTA Board of Directors or Board of Supervisors Hearings or escalation per sections 4.2(b), 7.3(e) and 8.3. MOHCD does not have review timelines, so City review timelines herein may be adjusted to reflect MOHCD's approval.

Terms (also elsewhere in Lease Disposition and Development Agreement)

- AHSC refers to the Affordable Housing and Sustainable Communities Program
- BOS refers to the Board of Supervisors
- City refers to the City and County of San Francisco, acting by and through the San Francisco Municipal Transportation Agency (SFMTA).
- CDLAC refers to the California Debt Limit Allocation Committee
- GC refers to General Contractor
- HCD refers to the California Department of Housing and Community Development
- IF refers to the Infrastructure Facility
- LOI refers to Letter of Interest
- MTAB refers to the SFMTA Board of Directors
- MOHCD refers to the Mayor's Office of Housing and Community Development.
- TCAC refers to the California Tax Credit Allocation Committee

EXHIBIT D

Certificate of Representations and Warranties

Pursuant to Section 3.5(a)(xv) of the Lease Development and Disposition Agreement between the City and County of San Francisco, a municipal corporation acting by and through the San Francisco Municipal Transit Authority (“City”), and Plenary Potrero Housing LLC, a California limited liability company (“Developer”), dated [_____] (the “Agreement”), Developer affirms to City that the representations and warranties made by Developer and set forth in Section 14.1 of the Agreement were true and accurate as of the Effective Date (as defined in the Agreement) and continue to be true and accurate as of _____, which is the date of the Close of Escrow (as defined in the Agreement) and Developer’s execution of this Certificate of Representatives and Warranties.

Plenary Potrero Housing LLC,
a California limited liability company

By:
Name:
Its:

EXHIBIT E
Initial Financing Plan

	C	D	E	F	G	H	I
9	SOURCES OF FUNDS		TOTAL	COMMERCIAL		CONSTRUCTION	
10							
11	Perm Loan	5.50%	4,764,900	35 yr am/20 yr term			
12		0.00%	0		0		
13	AHSC AHD		33,000,000	55 yr-3% RR			
14	AHSC HRI		2,000,000				2,000,000
15			0				0
16	MOHCD - ADJUST HERE		35,075,903	55 yr-3% RR		2,808,719	35,075,903
17	SFMTA Common Infrastructure Loan		4,183,646	55 yr-0% RR			4,183,646
18	AHP		2,000,000	55 yr-0% RR			
19	Deferred Developer Fee		1,000,000				
20	GP equity		1,000,000				100
21	Investor Capital Contributions	federal	43,874,152				4,387,415
22		state	0				
23	TOTAL SOURCES		126,898,601		2,808,719		
24							
25							
26	Construction loan - tax exempt bond	66,170,993	6.75%	40.00%			66,170,993
27	Construction loan - taxable tail	10,670,860	20 months const +		6		10,670,860
28	Total Construction Loan	76,841,854	net dev fee	2,500,000			122,488,918
29	Surplus/(Gap)		(0)		2.14%		
30	USES OF FUNDS	TOTAL COST	RESIDENTIAL	COMMERCIAL	BASIS FOR 4% CREDIT	CONSTRUCTION PERIOD COSTS	
31							
32	LAND COST/ACQUISITION						
33	Land Cost or Value - ground lease		0	0	0		0
34	Demolition & Environmental Remediation		0	0	0		0
35	Holding Costs		0	0	0		0
36	Title & Escrow Land Acq.		5,000	4,895	105		5,000
37	Legal Land Acq.		25,000	24,476	524		
38	Predev loan interest		0	0	0		
39	Offsite work/assessments for infrastructure		4,183,646	4,095,893	87,753	4,095,893	4,183,646
40	Total Acquisition Cost		4,213,646	4,125,264	88,382	4,095,893	4,213,646
41	REHABILITATION						
42	Site Work		0	0	0		0
43	Structures		0	0	0	0	0
44	General Requirements		0	0	0	0	0
45	Contractor Overhead		0	0	0	0	0
46	Contractor Profit		0	0	0	0	0
47	Total Rehabilitation Cost		0	0	0		0
48	NEW CONSTRUCTION						
49	Site Work and Utilities	total w offsite and infrastruct	0	0	0	0	0
50	Residential Structures	93,243,588	72,642,202	72,642,202	0	72,642,202	72,642,202
51	Commercial Hard Costs		1,590,400	0	1,590,400	0	1,590,400
52	General Requirements		2,950,715	2,888,823	61,892	2,888,823	2,950,715
53	Contractor Insurance & Bond		1,733,545	1,697,183	36,361	1,697,183	1,733,545
54	Contractor Overhead & Profit		2,397,456	2,347,169	50,287	2,347,169	2,397,456
55	Escalation, Bid/Plan Check, Contractor, Design Contingency		7,745,626	7,583,160	162,466	7,583,160	7,745,626
56	Total New Construction Costs		89,059,942	87,158,536	1,901,406	87,158,536	89,059,942
57	ARCHITECTURAL FEES						
58	Design and Engineering		4,064,299	3,979,050	85,249	3,979,050	4,064,299
59	Supervision		0	0	0	0	0
60	Total Architectural Costs		4,064,299	3,979,050	85,249	3,979,050	4,064,299
61	Survey, Engineering and Testing		222,000	217,344	4,656	217,344	222,000
62	CONSTR. INTEREST & FEES						
63	Const. Loan Interest		9,646,002	9,443,676	202,326	5,512,001	9,646,002
64	Predev loan fees / interest		0	0	0	0	0
65	Construction loan fee	0.75%	496,282	485,873	10,410	485,873	496,282
66	Other Lender Costs		50,000	48,951	1,049	48,951	50,000
67	Taxes (During Construction)		0	0	0	0	0
68	Insurance		2,000,000	1,958,050	41,950	1,958,050	2,000,000
69	Legal		85,000	83,217	1,783	83,217	85,000
70	Title and Recording		100,000	97,902	2,098	97,902	100,000
71	Total Construction Interest and Fees		12,377,285	12,117,669	259,616	8,185,995	12,377,285
72	PERMANENT FINANCING						
73	Perm loan fee	1.00%	47,649	47,649	0		47,649
74	Costs of bond issuance		764,901	748,857	16,044		764,901
75	Title and Recording		35,000	34,266	734		
76	Legal		40,000	39,161	839		
77	Other Financing Costs		55,000	55,000			
78	Total Permanent Financing Costs		942,550	924,933	17,617	0	812,550
79	LEGAL FEES						
80	Lender Legal Costs Paid by Applicant (above)		0	0	0	0	0
81	Other - Owner Legal		200,000	195,805	4,195	195,805	195,805
82	Total Attorney Costs		200,000	195,805	4,195	195,805	195,805
83	RESERVES						
84	Capitalized Operating Reserve - 3mo		475,488	475,488	0		0
85	Capitalized Lease Up Reserve		0	0	0		0
86	Capitalized Replacement Reserve		0	0	0		0
87	Cmrdl Lease Up Reserve		0	0	0		0
88	Total Reserve Costs		475,488	475,488	0	0	0
89	Total Appraisal Costs		20,000	19,580	420	19,580	20,000
90	Total Construction Contingency	5.00%	4,274,898	4,185,231	89,667	4,185,231	4,274,898
91	OTHER						
92	Tax Credit App./Alloc./Monitoring fees		117,777	117,777	0		117,777
93	Construction Management		309,446	302,955	6,491	302,955	309,446
94	Environmental Reports, NEPA		125,000	122,378	2,622	122,378	125,000
95	Security		50,000	48,951	1,049	48,951	50,000
96	Preconstruction services, Permit Expediter		250,000	244,756	5,244	244,756	250,000
97	Local Development Impact Fees		1,000,000	979,025	20,975	979,025	1,000,000
98	Permit Processing Fees		1,250,000	1,223,781	26,219	1,223,781	1,250,000

	C	D	E	F	G	H	I
99	Market Study		30,000	29,371	629		30,000
100	Marketing, Lease up, Community Outreach, Start-up		345,000	345,000	0		345,000
101	Commercial Legal and Planning		150,000		150,000		150,000
102	Utility Fees		800,000	783,220	16,780	783,220	800,000
103	Furnishings		247,500	247,500		247,500	247,500
104	Soft Cost Contingency	7%	1,578,770	1,545,655	33,115	1,545,655	1,578,770
105	Total Other Costs		6,253,492	5,990,369	263,124	5,498,222	6,253,492
106	Total Project Cost		122,103,601	119,389,269	2,714,331	113,535,656	121,493,918
107	DEVELOPER COSTS						
108	Developer Overhead/Profit		4,500,000	4,405,612	94,388	4,405,612	700,000
109	Consultant/Processing Agent						
110	Project Administration						
111	Broker Fees paid by owner						
112	Construction Management Oversight						
113	Other		0				
114	Total Developer Costs		4,500,000	4,405,612	94,388	4,405,612	700,000
115							
116	TOTAL PROJECT COST		126,603,601	123,794,881	2,808,719	117,941,268	122,193,918
117	Syndication Costs						
118	Legal - Syndication/Organization		80,000	80,000			80,000
119	Audit		35,000	35,000			35,000
120	Consultant - Syndication		100,000	100,000			100,000
121	Investor Legal		80,000	80,000			80,000
122	Total Syndication Costs		295,000	295,000	0	0	295,000
123	TOTAL PROJECT COSTS INCL. SYNDICATION		126,898,601	124,089,881	2,808,719	117,941,268	122,488,918
124			1,281,804			29,759,045	
125	COSTS OF BOND ISSUANCE		122,488,918				
126							
127	Bond Counsel		70,000				
128	Issuer Fee @ .25% (includes legal)		306,222				
129	Issuer app/legal		0				
130	Issuer monitor during const		255,185				
131	CDLAC		42,871				
132	CDIAC		30,622				
133	Advisor/Trustee		60,000				
134	TOTAL		764,901				
135							
136	Developer Fee						
137	Total	4,500,000					
138	Cash Paid Fee	2,500,000	HCD/TCAC Max				
139	Deferred	1,000,000	HCD Max				
140	GP Equity	1,000,000					
141							
142	Contingency Break Down						
143	Escalation	2.00%	1,475,357				
144	Bid & Plan Check	4.00%	2,950,715				
145	Design	2.00%	1,475,357				
146	Contractor's	2.50%	1,844,197				
147	Owner's	5.00%	4,274,898				
148	Total		12,020,524				

50% TEST		
Basis + land + commercial		120,749,987
bond financing		66,170,993
		54.80%
Taxable tail construction loan		10,670,860
AHSC Total Request		
Housing - AHD		33,000,000
Housing - HRI		2,000,000
STI ?	25.00%	7,500,000
TRA ?	5.00%	1,500,000
Program ?	1 pt for prgm	500,000
TOTAL AHSC		44,500,000
STI: for max pts lower of \$7.5M or 25% of total request		
TRA: for max pts lower of \$1.5M or 5% of total ask		

	C	D	E	F	G	H
149						
150	CREDIT CALCULATIONS					
151	Basis for 4% low income credit		117,941,268			
152	REDUCE FOR tiebreaker		117,941,268	0		
153			117,941,268	100.00%	Residential percentage	
154	Boost for DDA/QCT?		117,941,268	100%	No DDA/QCT 2025	
155						
156	Federal Credit		4,717,651	4.00%	fixed rate	35382380.41
157	State Credit		0			
158					equity estimate	net equity
159	Equity from Federal Credit		43,874,152	0.93		0.923746888
160	Equity from State Credit		0	0.85		
161						
162	TOTAL EQUITY TO PROJECT		43,874,152			
163			43,579,152		net equity	
164						
165	Bryant St and Mariposa Street, San Francisco				2025	
166	BASIS LIMIT CALC.				4% limits	
167		11 Studio	689,665	7,586,315		
168		34 1BR	795,177	27,036,018		
169		28 2BR	959,200	26,857,600		
170		26 3BR	1,227,776	31,922,176		
171		99		93,402,109		
172	Plus prevailing wages	20% Yes		18,680,422		
173	Plus Impact Fees	Yes		979,025		
174	Plus garage	7% No		0		
175	Plus Elevator	10% Yes		9,340,211		
176	Plus 100% spec needs	2% No		0		
177	Energy (varies up to 10%)	4% No		0		
178	Daycare Center	2% No		0		25
179	4% project affordability points for units <35% ami	2%	26%	47,654,137		26
180	4% project affordability points for units 35%> <50%	1%	27%	24,780,151		
181	Total Maximum Basis			194,836,055		
182	Dev Fee in Basis					
183	Compare to project basis		117,941,268			
184	LOWER OF THE TWO			117,941,268		
185			130% test	60.53%		

	AW	AX	AY	AZ	BA	BB	BC
8	9	10	11	12	13	14	15
9							
10	2,535,649	2,599,040	2,664,016	2,730,617	2,798,882	2,868,854	2,940,575
11	13,027	13,353	13,687	14,029	14,380	14,739	15,108
12	-127,434	-130,620	-133,885	-137,232	-140,663	-144,180	-147,784
13	2,421,242	2,481,773	2,543,818	2,607,413	2,672,598	2,739,413	2,807,899
14	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0
17							
18	1,699,842	1,759,337	1,820,914	1,884,646	1,950,608	2,018,880	2,089,540
19	120,622	123,637	126,728	129,897	133,144	136,473	139,884
20	0	0	0	0	0	0	0
21	600,778	598,799	596,176	592,871	588,846	584,061	578,474
22	307,059	307,059	307,059	307,059	307,059	307,059	307,059
23	138,600	138,600	138,600	138,600	138,600	138,600	138,600
24	11,912	11,912	11,912	11,912	11,912	11,912	11,912
25	5,000	5,000	5,000	5,000	5,000	5,000	5,000
26	49,500	49,500	49,500	49,500	49,500	49,500	49,500
27	88,706	86,727	84,104	80,799	76,774	71,990	66,402
28							
29	1.20	1.19	1.19	1.18	1.17	1.16	1.15
30							
31	9,218	9,540	9,874	10,220	10,577	10,948	11,331
32	0	0	0	0	0	0	0
33	39,744	38,594	37,115	35,290	33,098	30,521	27,536
34	39,744	38,594	37,115	35,290	33,098	30,521	27,536
35	0	0	0	0	0	0	0
36	0	0	0	0	0	0	0
37							
38	0	0	0	0	0	0	0
39	0	0	0	0	0	0	0
40	0	0	0	0	0	0	0
41	0	0	0	0	0	0	0
42							
43	0	0	0	0	0	0	0
44							
45	0	0	0	0	0	0	0