

RESOLUTION NO. P- 13 -18

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FOSTER CITY RECOMMENDING CITY COUNCIL APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FOSTER CITY AND PILGRIM TRITON PHASE III FC LP TO DEVELOP THE PHASE C OF THE PILGRIM TRITON MASTER PLAN DEVELOPMENT PROJECT DESCRIBED IN THE MASTER DEVELOPMENT AGREEMENT -- IN NEIGHBORHOOD PT – PILGRIM TRITON PHASE III FC LP – (APN 094-010-520 AND -860) – DA2018-0001

CITY OF FOSTER CITY PLANNING COMMISSION

WHEREAS, in accordance with California Government Code sections 65864 *et seq.* (the "Development Agreement Statute"), which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights, the City of Foster City ("City") enacted Resolution No. 80-73 to implement procedures for the processing and approval of development agreements; and

WHEREAS, the Development Agreement Statute and Resolution No. 80-73 require the City to hold a public hearing and make findings that the provisions of the development agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in the General Plan; and

WHEREAS, the Pilgrim Triton Master Development Agreement was effective on February 11, 2010 entered into by the Developers of the Pilgrim Triton Master Plan, including AMB Institutional Alliance Fund III, L.P., Foster City Executive Park Partners, and the Northwestern Mutual Life Insurance Company (collectively, the "Developers") that owned approximately ±20.75 acres of adjacent real property in Foster City ("Property") and proposed a project that entails the development under a mixed-use master plan of up to 296,000 square feet of commercial/industrial office use and up to 730 residential units, including up to 64 live/work commercial units; and

WHEREAS, Developers and the City entered into a Master Development Agreement ("Master Development Agreement") in order to provide Developers with some certainty in the land use regulatory process and to promote the development of the Property which will provide public benefits to the City, including the provision of housing and needed infrastructure for area growth; and

WHEREAS, Section 6.1 of the Master Development Agreement provides that, if requested by a Developer, the City will enter into a separate development agreement with an individual Developer that will specify the rights and obligations applicable to the requesting Developer; and

WHEREAS, Pilgrim Triton Phase III FC LP (PTPIII) is the fee owner of an approximately 4.78 acre portion of the Property designated as APNs 094-010-520 and 094-010-860 including the parcel designated in the Pilgrim Triton Master Development Agreement as Phase C (APN 094-010-520) and Parcel C of Phase B (APN 094-010-860), collectively the "PTPIII Property;" and

WHEREAS, PTPIII has proposed a development of up to 70 for sale market rate residential townhomes (including the 17 that are currently entitled on the PTPIII Property) together with twenty-two (22) affordable multi-family housing units in a stand-alone surface parked building on the PTPIII Property and completion of the Triton Park Plaza ("Remainder Park"); and

WHEREAS, a concurrent application is being considered to amend the Pilgrim Triton Master Development Agreement to incorporate the proposed changes by PTPIII for the PTPIII Property; and

WHEREAS, in exchange for the PTPIII Project Approvals and City's agreement to amend the Master Development Agreement, Developer has agreed to (1) develop the Workforce Project and the Remainder Park concurrently with the first townhome units of the Market Rate Project; (2) grant the City an option to purchase the Workforce Project once complete; and (3) execute, acknowledge and record a Regulatory Agreement to ensure the long-term affordability of the Workforce Project; and

WHEREAS, pursuant to Section 6.1 of the Master Development Agreement, which provides for a separate development agreement to specify the rights and obligations applicable to a specific portion of the Site, Developer has requested a separate development agreement to specify the rights and obligations applicable only to the PTPIII Project ("PTPIII Development Agreement"); and

WHEREAS, a Notice of Public Hearing was duly posted, published, and mailed for consideration of the proposed PTPIII Development Agreement at the Planning Commission meeting of July 19, 2018, and on said date the Public Hearing was opened, held and closed and the item continued to the Public Meeting of August 2, 2018.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Foster City does hereby find as follows:

1. The PTPIII Project set forth in the proposed PTPIII Development Agreement is consistent with the adopted City of Foster City General Plan and its goals, policies, standards and land use designations; and
2. The proposed PTPIII Development Agreement is in the public interest in that it offers PTPIII the assurance needed in order to plan, finance, schedule and construct the PTPIII Project in accordance with approved plans and that the granting of such assurance to PTPIII will offer the City the best opportunity to secure the completion of the Pilgrim Triton Master Plan Project and the PTPIII Project and its resulting tax, employment and associated economic and public benefits; and
3. The proposed PTPIII Development Agreement preserves the City's rights to retain, via the City's usual use permit design review process subject to the terms of the proposed PTPIII Development Agreement and the Master Development Agreement, full and complete discretion with respect to design review issues.

BE IT FURTHER RESOLVED that the Planning Commission recommends City Council approval of the PTPIII Development Agreement, attached as Exhibit A.

PASSED AND ADOPTED by the Planning Commission of the City of Foster City at a Regular Meeting thereof held on August 2, 2018 by the following vote:

AYES COMMISSIONERS: Avram, Pattum, Williams and Chair Dyckman

NOES COMMISSIONERS: Wykoff


ABSTAIN COMMISSIONERS:

ABSENT COMMISSIONERS:

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke.

DAN DYCKMAN, CHAIR

ATTEST:

A handwritten signature in black ink, featuring several overlapping loops and a sharp upward stroke at the end.
CURTIS BANKS, SECRETARY

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: City Clerk

Record for the Benefit of
The City of Foster City
Pursuant to Government Code
Section 27383

Space Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

Between

CITY OF FOSTER CITY,
a California municipal corporation

and

PILGRIM TRITON PHASE III FC LP,
a Delaware limited liability partnership

PILGRIM-TRITON

PTPIII PROJECT

DEVELOPMENT AGREEMENT PTPIII PROJECT

This Development Agreement ("**PTPIII Project DA**") dated for reference purposes only as of _____, 2018, is entered into by and between the City of Foster City, a California municipal corporation ("**City**") and Pilgrim Triton Phase III FC LP, a Delaware limited liability partnership ("**Developer**"), pursuant to section 65864 et seq. of the California Government Code. City and Developer may be collectively referred to herein as a "**Party**," and collectively as the "**Parties**."

This PTPIII Project DA is entered into on the basis of the following facts, understanding and intentions of the Parties.

R E C I T A L S

A. AMB Institutional Alliance Fund III, L.P., a Delaware limited partnership, Foster City Executive Park Partners, a California general partnership, and The Northwestern Mutual Life Insurance Company, a Wisconsin corporation entered into a Master Development Agreement with the City effective February 11, 2010 (Recorder's Document No. 2010-017940), to facilitate the redevelopment of that certain real property consisting of approximately 20.75 acres within the City of Foster City, County of Mateo, State of California, which is legally described in Exhibits A-1, B-1 and C-1 to the Development Agreement and shown on the maps attached to the Master Development Agreement as Exhibits A-2, B-2 and C-2 (collectively, the "**Site**"). The Master Development Agreement has been amended by a First Minor Amendment dated June 29, 2016 (Recorder's Document No. 2016-066621) ("**First Amendment**"), a Second Minor Amendment dated May 16, 2018 (Recorder's Document No. Major 2018-038122) ("**Second Amendment**") and a Third (Major) Amendment of even date herewith (Recorder's Document No. 2018-_____) ("**Third Amendment**"). The original Master Development Agreement, as amended by the First, Second and Third Amendments, is hereinafter referred to as the "**Master Development Agreement**."

B. Developer is the fee owner of an approximately 4.78 acre portion of the Site designated as APNs 094-010-520 and 094-010-860, depicted and referred to in the Pilgrim Triton Master Plan as "Parcel C of Phase B" and "Phase C" and more particularly described and depicted in Exhibit 3 attached to the Third Amendment (collectively, the "**PTPIII Property**").

C. The Master Development Agreement and Master Plan originally provided for the development of a total of approximately 225,943 square feet of commercial uses and 17 residential townhomes on the PTPIII Property, consisting of 172,943 square feet of commercial uses and 17 residential homes on Phase C and 53,000 square feet of commercial uses on Parcel C of Phase B.

D. Pursuant to the Third Amendment, as requested by the Developer, the PTPIII Property has been approved for redevelopment with up to seventy (70) for sale, market rate residential townhomes (including the 17 that are currently entitled on the PTPIII Property) ("**Market Rate Project**") together with twenty-two (22) affordable multi-family housing units in a stand-alone surfaced parked building ("**Workforce Project**" and, collectively with the Market Rate Project, the "**PTPIII Project**").

E. The approximately 4.18 acre portion of the PTPIII Property on which the Market Rate Project is to be constructed is depicted on Exhibit 1 attached hereto as the “**Market Rate Land**,” and the approximately 0.6 acre portion of the PTPIII Property on which the Workforce Project is to be constructed is depicted in Exhibit 2 attached hereto as the “**Workforce Land**.” Except as expressly provided otherwise, the term Workforce Project shall include the term Workforce Land, and the term Market Rate Project shall include the term Market Rate Land.

F. [List project approvals, including Master Plan Amendment (“**Master Plan Amendment**”) and CEQA findings when available] (collectively, the “**PTPIII Project Approvals**.”)

G. In exchange for the PTPIII Project Approvals and City’s agreement to amend the Master Development Agreement, Developer has agreed to (1) develop the Workforce Project and the Remainder Park (as that term is defined in Section 3(C) of the Second Amendment) concurrently with the first townhome units of the Market Rate Project; (2) grant the City an option, in its sole discretion, to purchase the Workforce Project once complete at the lower of (a) a maximum price or (b) the otherwise applicable market price for for-sale affordable units established by Area Median Income as applicable to the affordable units as defined herein; and (3) execute, acknowledge and record in the Official Records of the County Recorder a Regulatory Agreement in the form attached hereto as Exhibit 4 (“**Regulatory Agreement**”) to ensure the long-term affordability of the Workforce Project regardless of whether City exercises its option to purchase, all on the terms and subject to the conditions set forth therein.

H. Pursuant to Section 6.1 of the Master Development Agreement, which provides for a separate development agreement to specify the rights and obligations applicable to a specific portion of the Site, Developer has requested a separate development agreement to specify the rights and obligations applicable only to the PTPIII Project.

I. The Planning Commission, after duly noticed public hearing, recommended approval of this PTPIII Project DA on _____, 2018 pursuant to Resolution No. _____. The City Council, after duly noticed public hearings, introduced Ordinance No. _____ approving this PTPIII Project DA and authorizing its execution on _____, 2018, and adopted Ordinance No. _____ on _____, 2018. Ordinance No. _____ became effective on _____, 2018.

A G R E E M E N T

NOW, THEREFORE, pursuant to Section 6.1 of the Master Development Agreement, the Parties hereto agree to the following:

1. Master Development Agreement Incorporated By Reference. All the definitions, terms, covenants, provisions and exhibits to the Master Development Agreement are hereby incorporated by reference and, except as expressly modified by or inconsistent with this PTPIII Project DA, shall remain in full force and effect with respect to the PTPIII Property and PTPIII Project.
2. PTPIII Terms; Interpretation. Notwithstanding any other provision hereof to the contrary, this PTPIII Project DA shall apply only to the PTPIII Property and the PTPIII Project.

In the event of a conflict between the provisions hereof and the terms of the Master Development Agreement, the provisions of this PTPIII Project DA shall control.

3. Term. The “**Initial Term**” of this PTPIII Project DA shall commence on the Effective Date (as defined in Section 14) and shall continue until the date which is five (5) years after the Effective Date, unless this PTPIII Project DA is earlier terminated or extended in accordance with the provisions hereof. The Initial Term has been established by the Parties as a reasonable estimate of the time required to carry out and develop the entirety of the PTPIII Project and obtain the public benefits of the PTPIII Project, including the Remainder Park and the Workforce Project. If the Developer has Commenced Construction of, but not fully completed, the Workforce Project by the expiration of the Initial Term, the City Manager may, in his or her sole discretion, extend the Term of this PTPIII Project DA by up to three (3) years (“**Extension Term**”) to allow the City sufficient time to exercise its Option and/or, if City has previously exercised its Option, to close escrow for purchase of the Workforce Project. If City exercises its right to extend the Initial Term as provided above, the Parties shall execute an amendment of this PTPIII Project DA memorializing extension of the Initial Term. As used herein “**Term**” means the Initial Term plus any Extension Term, if applicable. If on the date that the Term expires Developer has not (i) obtained grading, demolition and building permits for the horizontal site preparation and infrastructure designed to support the PTPIII Project, commenced work and expended more than \$1 Million in actual construction costs in reliance on such permits, (ii) Commenced Construction (as defined below) of the Workforce Project, or (iii) Substantially Completed the Remainder Park (as defined by Section 3.3.1.1 of the Master Development Agreement), then the zoning for the PTPIII Property shall automatically revert back to the Master Development Plan zoning in effect as of _____, 2018 (“**Reversion Date**”), as if this PTPIII Project DA, the Regulatory Agreement and the Third Amendment had never been executed. If, on the date that the Term expires, the Developer has obtained final inspection approval of the foundation of the Workforce Project, the vested rights granted to Developer under Section 4 of this PTPIII Project DA shall automatically expire, but the zoning for the PTPIII Property shall remain as set forth in the Master Plan Amendment established by Ordinance No. _____ adopted on _____, 2018, until such time as the zoning for all or a portion of the PTPIII Property is modified by City in accordance with applicable law. As used herein, “**Substantial Completion**” or “**Substantially Complete**” shall be deemed to have occurred when (i) Developer has provided adequate evidence to the City Manager that ninety percent (90%) of the contract price for the construction of the applicable portion of the PTPIII Project (including all change orders) has been expended and (ii) the City Manager determined, in his or her reasonable discretion in consultation with the building official that the life safety systems within the applicable portion and as applicable have been installed and are functional. As used herein, “**Commence Construction**” and “**Commencement of Construction**” and similar formulations of such terms shall mean Developer has completed grading and site preparation and commenced the work of pouring the foundation of the Workforce Project. The Parties shall memorialize the actual Commencement of Construction date (“**Commencement Date**”) in writing.

4. Vested Rights. Subject to fulfillment of the provisions of this PTPIII Project DA and all non-conflicting provisions of the Master Development Agreement, the City hereby grants Developer the present vested right to develop and construct the PTPIII Project on the PTPIII Property.

5. Workforce Project.

(a) Development of Workforce Project. In consideration of City's grant of the vested rights described in Section 4 and approval of the Third Amendment and PTPIII Project Approvals, Developer shall be responsible, at its sole cost and expense, for the design and construction of the PTPIII Project, including all aspects of the Workforce Project within the times provided for herein. The quality of design, materials, and construction of the Workforce Project, including interior and exterior fixtures, finishes, appliances and equipment, shall be comparable in all material respects to the quality of design, materials and construction of the Plaza and Triton projects previously constructed within the Pilgrim Triton Master Plan Area. Upon approval, the Specific Development Plan/Use Permit shall control as to the design and materials of the Workforce Project. Except the City's standard regulatory role in the review and processing of permits and approvals in the normal course and in compliance with all applicable law, City shall not be responsible to Developer or its agents, employees, principals, contractors or subcontractors for any aspect of the design, construction or funding of the PTPIII Project or any part thereof.

(b) Affordability Restriction. In order to implement Section 3.4 of the Master Development Agreement and ensure the affordability of the Workforce Project, the twenty-two (22) residential dwelling units in the Workforce Project shall be rent restricted as follows: (a) two units (2) shall be rented at "affordable rents" as defined in Section 50053 of the Health and Safety Code ("**Affordable Rents**") to "very low income households"; (b) two (2) units shall be rented at Affordable Rents to "low income households"; (c) ten (10) units shall be rented at Affordable Rents to "moderate income households"; and (d) eight (8) units shall be rented at rents not to exceed the product of 30% times 130% of area median income adjusted for family size appropriate for the unit, all as set forth in a Regulatory Agreement in the form attached hereto as Exhibit 4 ("**Regulatory Agreement**"). The Regulatory Agreement shall be executed, acknowledged and recorded in the Official Records prior to issuance of the first building permit issued for the PTPIII Project. The Regulatory Agreement shall have priority over all monetary liens, other than the lien for current unpaid taxes, and Developer, to the extent there are any recorded mortgages, deeds of trust or other monetary liens for construction financing or other purposes, shall either pay off and cause the removal of such liens or cause the lender or other holder(s) of such lien(s) to execute acknowledge and deliver to City for recordation in the Official Records a subordination agreement in form reasonably acceptable to the City Attorney subordinating the lien(s) of such financing or other instruments to the Regulatory Agreement. For purposes of this PTPIII Project DA, "**Area Median Income**" means the median income for San Mateo County, California, adjusted for household size, as determined by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision. City acknowledges and agrees that Developer's construction of the Workforce Project and rent restriction of the units therein as set forth in the Regulatory Agreement shall satisfy Developer's Affordable Housing obligation with respect to the Market Rate Project under Section 3.4 of the Master Development Agreement and shall satisfy in full any and all obligations related to affordable housing for the PTPIII Project.

(c) City Discretionary Option to Purchase. As further consideration for City's agreement to grant the vested rights described in Section 4 and enter the Third Amendment Developer shall grant City, in its sole discretion, an option to purchase the Workforce Project on and subject to the terms set forth in the form of Purchase Agreement attached hereto as Exhibit 3 ("**Purchase Agreement**"), and subject to the following:

(i) Grant of Option. Developer hereby grants to City, upon the terms and conditions of the Purchase Agreement, the exclusive and irrevocable right ("**Option**") to acquire, upon completion of the Workforce Project,: (a) fee title to the Workforce Parcel, together with the Workforce Project and any ancillary improvements currently thereon or to be constructed by Developer in connection therewith as provided in this PTPIII Project DA, the PTPIII Project Approvals and the Specific Development Plan/Use Permit; and (b) all of Developer's right, title and interest, if any, in and to any and all easements, water rights, warranties and other rights appurtenant to such real property (all such real property, improvements, easements, warranties and rights are hereinafter collectively referred to as the "**Option Property**"). The Purchase Price (defined in Section 1.1 of the Purchase Agreement) is the agreed upon price for all of the Option Property.

(ii) Developer Option Notice. Promptly following the City's issuance of a final inspection for the foundation of the Workforce Project, Developer shall provide written notice to the City, together with complete copies of any and all geotechnical reports, environmental reports (including Phase 1 and Phase 2 reports) and surveys in Developer's possession or control; an updated preliminary title report for the Workforce Land; and such other similar documents and materials as reasonably requested by City (collectively, "**Due Diligence Materials**"), to establish the date of the commencement of the City's Option ("**Developer Option Notice**"). Developer's Option Notice shall only be effective if accompanied by the Due Diligence Materials referenced above.

(iii) Exercise of Option. From receipt of the Developer's Option Notice and Due Diligence Materials, the City shall have sixty (60) calendar days ("**Option Expiration Date**") to obtain City Council approval and, assuming such approval is obtained, exercise the Option by opening an escrow with the Escrow Holder and delivering to the Developer all of the following by no later than 5:00 pm Pacific Time on the Option Expiration Date:

(1) Written notice of City's exercise of the Option and notice of an open escrow ("**Escrow**") with _____ ("**Escrow Holder**") for Developer's conveyance of the Option Property to City;

(2) A City-executed copy of the Purchase Agreement, in substantially the form attached as Exhibit 3.

(3) A City-executed copy of the Escrow instructions in substantially the form provided in the executed Purchase Agreement.

(4) The Option Payment (defined below).

(iv) Developer's Obligation Upon Receipt of Option Notice. Upon such exercise, Developer shall be obligated to sell the Option Property to City and City shall be

obligated to purchase the Option Property from Developer in accordance with and subject to the terms of the Purchase Agreement. Developer shall promptly sign and deliver to Escrow Holder and City a counterpart of the Purchase Agreement, Escrow Instructions, and deposit with Escrow Holder a duly executed and acknowledged Grant Deed (defined in Section 3.1 of the Purchase Agreement).

(v) Option Price. As consideration for the Option, City shall pay to Developer, concurrently with execution hereof, One Hundred Dollars (\$100) ("**Option Price**"), which amount, along with the other consideration referenced in the Purchase Agreement, shall be consideration for the Option and deemed earned and nonrefundable upon execution of this PTPIII Project DA.

6. Construction Sequencing of Market Rate Project and Workforce Project. Developer intends to develop the PTPIII Property in a continuous sequence starting nearly simultaneously with the Workforce Project, Remainder Park (as defined in Master Development Agreement Section 3.3.1.1 as amended by the Second Amendment) and the townhomes of the Market Rate Project, generally located closest to the Workforce Project and then continuing with the remainder of the townhomes further from the Workforce Project until completion. It is important to the construction and financing feasibility of the PTPIII Project that construction activities are able to continue without interruption across the entirety of the PTPIII Property. Notwithstanding any contrary provisions in the Master Development Agreement, and subject to Force Majeure, Developer's development of the Market Rate Project shall be restricted as follows to ensure the completion of the Workforce Project and Remainder Park:

(a) Construction Sequencing. Developer shall use good faith efforts to Substantially Complete the Workforce Project and the Remainder Park, at substantially the same time as the first thirty-five to forty-seven of the townhomes in the Market Rate Project. However, the parties acknowledge that the Workforce Project, as a larger building, is anticipated to take approximately 15 months to complete, that each town home building is anticipated to take approximately 10 months to complete, and that some townhomes, therefore, will likely be completed before the Workforce Project. Notwithstanding the differing time lines for construction of the different building types, the Parties acknowledge their mutual intent that Developer permit and construct the Workforce Project, the Remainder Park and up to the first forty-seven (47) of the seventy (70) total townhome units in the Market Rate Project at approximately concurrent times.

(b) Issuance of Building Permits. Notwithstanding any other provision hereof to the contrary, City shall have no obligation to issue a building permit for any Market Rate Project townhome unit until Developer has applied for and City has issued building permits for both the Workforce Project and the Remainder Park. At such time as Developer has obtained building permits for the Workforce Project and the Remainder Park and paid all fees payable in connection therewith, Developer, subject to payment of applicable fees, may pull building permits for any or all of the townhome buildings in the Market Rate Project.

(c) Certificates of Occupancy.

(i) Notwithstanding subsection 6(a) above, if the Developer has Commenced Construction of the Workforce Project and the Remainder Park, Developer may request, and when all usual conditions for issuance thereof have been satisfied, City shall issue certificates of occupancy for the completed townhome units for up to thirty-five (35) townhome units and temporary certificates of occupancy for up to two (2) additional designated model townhomes for marketing purposes only.

(ii) Notwithstanding subsection 6(a) above, if the City has issued a temporary certificate of occupancy for the Workforce Project and the Remainder Park is Substantially Complete, Developer may request, and when all usual conditions for issuance thereof have been satisfied, City shall issue certificates of occupancy for the completed townhome units for up to forty-seven (47) townhome units.

(iii) Upon issuance of final inspection of the Remainder Park and final certificate of occupancy for the Workforce Building, Developer may request, and when all usual conditions for issuance thereof have been satisfied, City shall issue certificates of occupancy for the completed townhome units for all townhome units in the Market Rate Project.

(iv) If the City Manager determines, in his or her reasonable discretion based on reasonable evidence, Developer is not proceeding with construction of the Workforce Project diligently and in good faith after Commencement of Construction, the City Manager may withhold certificates of occupancy.

(e) Processing. The Parties acknowledge that the City's timely review of plans, issuance of building and occupancy permits and scheduling of inspections is essential to Developer's ability to meet its obligations hereunder.

(d) Site Work Exempt. The term "building permit" for purposes of this Section 6 shall not include initial site preparation permits, such as demolition, grading or utilities.

7. Schedule of Performance.

(a) Developer shall apply for and obtain a Specific Development Plan/Use Permit for the entirety of the PTPIII Project, including the Workforce Project and Remainder Park, on or before December 31, 2019 ("**Permit Date**"). Developer's obligations under this Section 7(a) shall not be subject to extension for Force Majeure Delays, except that the City acknowledges that in the event the City fails to process the Specific Development Plan/Use Permit application in good faith this schedule milestone shall be extended as provided below.

(b) Subject to Force Majeure Delays, Developer shall pull a building permit for construction of the Workforce Project on or before the date that is two (2) years after the Permit Date.

(c) Subject to Force Majeure Delays, Developer shall Commence Construction of the Workforce Project prior to the expiration of the building permit and in sufficient time to Substantially Complete the Workforce Project prior to the end of the Term.

(d) Subject to Force Majeure Delays, Developer shall Substantially Complete the Workforce Project on or before the date that is eighteen (18) months after the Commencement Date.

The times within which Developer is to perform each of the tasks described above may be extended by the City Manager in his or her sole absolute discretion, provided however, the total of all extensions granted, if any, shall not extend the overall timeline for Substantial Completion of the Workforce Project beyond the expiration of the Term (including any extensions thereof) of this PTPIII Project DA.

8. PTPIII Required Park Obligation. Notwithstanding any contrary provisions in the Master Development Agreement, including Sections 3.2 and 3.3 thereof, Developer shall satisfy in full its "Required Park Obligation" under the Master Development Agreement with respect to the PTPIII Property and PTPIII Project as follows:

(a) Park Plaza Easement. Prior to issuance of a building permit for the Workforce Project, Developer shall execute, acknowledge and deliver to City a Plaza Easement in the form attached as "Exhibit K" to the Master Development Agreement for that portion of the Remainder Park located on the PTPIII Property and the former Triton Drive right-of-way area to be acquired by Developer as provided in Section 8(d) below. City shall record such Plaza Easement prior to issuance of any certificate of occupancy for the Market Rate Project. The Plaza Easement shall have priority over all monetary liens, other than the lien for current unpaid taxes, and Developer, to the extent there are any recorded mortgages, deeds of trust or other monetary liens for construction financing or other purposes, shall cause the lender or other holder(s) of such lien(s) to execute acknowledge and deliver to City for recordation in the Official Records one of the following: (i) a subordination agreement in form reasonably acceptable to the City Attorney subordinating the lien(s) of such financing or other instruments to the Plaza Easement or (ii) a partial reconveyance releasing the Park Plaza Site, or applicable portion thereof, from the lien of the mortgage, deed of trust or other financing instrument.

(b) Park Plaza Site Improvements. Developer at its expense shall construct and install all Remainder Park improvements pursuant to Section 3.3.1.1 of the Master Development Agreement, as restated by the Second Amendment. The Parties acknowledge that the estimated cost of the Remainder Park is equivalent or more than the estimated park fees for the PTPIII Project and that satisfactory construction and installation of the Remainder Park will fully satisfy Developer's "Required Park Obligation" under the Master Development Agreement.

(c) Park Plaza Maintenance. As provided in Section 3.3.1.2 of the Master Development Agreement (as restated in the Second Amendment), Developer at its expense shall contribute its Pro Rata Share to maintain the Park Plaza, including the Remainder Park improvements, in perpetuity by executing, acknowledging and delivering to City for recordation in the Official Records a Park Plaza Maintenance Agreement substantially in the form attached to the Second Amendment as "Exhibit 5".

(d) Easements for Access and Use of Private Open Space Area. Prior to any transfer or sale of the Workforce Land, Developer shall execute, acknowledge and deliver to City for recordation in the Official Records an irrevocable easement in favor of the owner of the

Workforce Land and its tenants and invitees and in form reasonably acceptable to the City Attorney authorizing Workforce Project tenants and their guests to access and use the open space area located on the Market Rate Land as generally depicted on Exhibit 5 attached hereto. The terms of the easement shall provide that the tenants and their invitees are subject to the same reasonable rules and restrictions (use, time of operation, conduct, responsibility for damage) as the owners and their guests in the Market Rate Project as may be established and amended from time to time by the Market Rate Project homeowners' association.

(e) Previously Collected Park Fees. Developer acknowledges and agrees that City shall have no obligation to commit or expend City park fees previously collected or collected in the future in connection with the development of any property included within the Pilgrim Triton Master Plan area towards construction of the Remainder Park improvements or maintenance of the Park Plaza.

(f) PTPIII Commitments Regarding Vacated Segments of Former Triton Drive. Pursuant to Section 3.14 of the Second Amendment, the Developer shall submit an application for vacation of the remaining portion of Triton Drive and request transfer of the underlying fee from the City concurrent with the application for the Specific Development Plan/Use Permit and complete the transfer of fee title prior to the issuance of the building permit for the Remainder Park.

9. Default.

(a) Cure Period. Subject to Force Majeure Delays, breach of, failure, or delay by any Party to perform any term or condition of this PTPIII Project DA within the times provided for herein shall constitute a default under this PTPIII Project DA. In the event of any alleged default of any term, condition, or obligation of this PTPIII Project DA, the Party alleging such default shall give the defaulting Party notice in writing specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party shall cure the default within forty-five (45) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged default is such that it cannot reasonably be cured within such forty five (45) day period, then the commencement of the cure within such time period, and the diligent and continuous prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently and continuously prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a default shall exist under this PTPIII Project DA and the non-defaulting Party may exercise any of the remedies available under Section 9(c) or Section 9(d), as applicable.

(b) Developer Default. Subject to written notice and opportunity to cure as specified in Section 9(a), and Force Majeure Delays, Developer shall be in default of this PTPIII Project DA if:

(i) Developer fails to meet any of the performance milestones set forth in Section 7 above.

(ii) Developer is in breach of any of its other material obligations under this PTPIII Project DA.

(iii) Developer is in breach of any of its obligations under the Regulatory Agreement or Purchase Agreement once each such agreement is executed and in effect in accordance with its respective terms.

(iv) Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

(v) Developer abandons or substantially suspends construction of the Workforce Project for a period of ninety (90) days after commencement of the work.

(c) Procedure for Default by Developer. If City has a reasonable good faith belief that Developer is not complying with the terms of this PTPIII Project DA, then after notice and expiration of the cure period specified in Section 9(a) above, the City may give notice of intent to terminate or modify this PTPIII Project DA to Developer pursuant to California Government Code section 65868. Following notice of intent to terminate or modify this PTPIII Project DA as provided above, the matter shall be scheduled for consideration and review in the manner set forth in Government Code sections 65865, 65867 and 65868 by the City Council within sixty (60) calendar days following the date of delivery of such notice (the “**Default Hearing**”). Following the consideration of the evidence presented in such review before the City Council and a determination, on the basis of evidence in the record, by a majority vote of the City Council that a default by Developer has occurred, Developer shall have no further cure period rights and the City may immediately terminate this PTPIII Project DA by written notice to Developer. As provided in the Third Amendment, if City terminates this PTPIII Project DA, then the zoning for the PTPIII Property shall automatically revert back to the Master Development Plan zoning in effect as of the Reversion Date, as if this PTPIII Project DA, the Regulatory Agreement, the Purchase Agreement and the Third Amendment had never been executed. This Section shall not be interpreted to constitute a waiver of section 65865.1 of the Government Code, but merely to provide the procedure by which the Parties may take the actions set forth in section 65865.1.

(d) Procedure for Default by the City. If Developer has a good faith belief that City is not complying with the terms of this PTPIII Project DA, then after notice and expiration of the cure period specified in Section 9(a) above, Developer shall be entitled to pursue equitable remedies, including specific performance. Developer expressly waives any right to recover any and all actual, consequential, punitive or exemplary damages in connection with any such City default. Annual Review. Evidence of default may also arise in the course of the regularly scheduled annual review of this PTPIII Project DA and the Master Development Agreement pursuant to California Government Code section 65865.1 as described in Section 5.2. of the Master Development Agreement. If either Party alleges that the other Party is in default following the completion of the normally scheduled annual review, such Party may then give the other a written Notice of Breach, in which event the provisions of this Section 9 shall apply. In addition, the regularly scheduled annual review of this PTPIII Project DA may, following compliance with the requirements of Section 9(a), serve as the Default Hearing for any alleged default by Developer as described in this Section 9.

10. Force Majeure. Subject to the limitations set forth in this Section 10 below and elsewhere in this PTPIII Project DA, the time within which either Party shall be required to perform any act under this PTPIII Project DA shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock outs, and other labor difficulties; Acts of God; unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed twenty (20) days for any winter season occurring after commencement of construction of the PTPIII Project; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; any development moratorium or any action of other public agencies that regulate land use, development, or the provision of services that prevents, prohibits, or delays construction of the PTPIII Project (including but not limited to delays in permit processing or inspections performed by the City); enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; Severe Economic Recession; and litigation or other administrative or judicial proceeding involving the PTPIII Project or this PTPIII Project DA (each a "**Force Majeure Delay**"). An extension of time for any such cause shall be for the period of the Force Majeure Delay and shall commence to run from the time of the commencement of the cause, if written notice in accordance with Section 13 is sent by the Party claiming such extension to the other Party within sixty (60) days of the commencement of the cause. If notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such notice. Times of performance under this PTPIII Project DA may also be extended in writing by the mutual agreement of the City and Developer. Other than in the case of Severe Economic Recession, Developer's inability or failure to obtain financing for the Workforce Project and/or Market Rate Project shall not be deemed causes outside the reasonable control of Developer and shall not be the basis for a Force Majeure Delay. For the purposes of this Section 10, "**Severe Economic Recession**" means a decline in the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of United States Gross Domestic Product ("**GDP**") published by the United States Department of Commerce Bureau of Economic Analysis (and not subsequent monthly revisions), lasting more than four (4) consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

11. Insurance. From and after initiation of construction activity on the PTPIII Project, Developer shall maintain, or shall cause its general contractor to maintain, insurance to cover Developer (including its agents, representatives, contractors, subcontractors, and employees) in connection with the performance of work under this PTPIII Project DA. This PTPIII Project DA identifies the minimum insurance levels with which Developer (directly or through its general contractor) shall comply; however, the minimum insurance levels shall not relieve Developer of any other performance responsibilities under this PTPIII Project DA (including the indemnity requirements), and Developer (directly or through its general contractor) may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with Developer's execution of this PTPIII Project DA, and prior to the commencement of any work, Developer shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Developer shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this PTPIII Project DA.

(a) Minimum Insurance Levels. Developer (or its general contractor) shall maintain insurance at the following minimum levels:

(i) Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

(ii) Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) Builder's all-risk insurance in an amount not less than the full insurable cost of the PTPIII Project and related improvements on a replacement cost basis.

(iv) Workers' Compensation coverage as required by the State of California.

(b) Endorsements. The insurance policies shall be endorsed as follows:

(i) For the commercial general liability insurance, the City (including its elected officials, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form at least as broad as ISO form CG 20 10 11 85.

(ii) Developer's insurance is primary to any other insurance, self-insurance or joint self-insurance available to the City with respect to any claim arising out of this PTPIII Project DA. Any insurance, self-insurance or joint self-insurance maintained by the City shall be excess of the Developer's insurance and shall not contribute with it.

(iii) Developer's insurance will not be canceled, limited, or allowed to expire without renewal until after 30 days' written notice has been given to the City. During the term of this PTPIII Project DA, Developer will not materially alter any of the policies or reduce any of the levels of coverage afforded by its insurance policies.

(c) Qualifications of Insurers. All insurance companies providing coverage to Developer shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VII."

12. Indemnity. Developer shall defend (with counsel reasonably acceptable to City) indemnify and hold harmless City and its elected officials, officers, agents, employees and contractors (collectively, "**City Parties**") from claims for any injury to persons or property occasioned by reason of the acts, omissions, negligence or willful misconduct of the Developer, its agents, employees, contractors or subcontractors in the performance of the PTPIII Project or this PTPIII Project DA. Developer further agrees to protect, defend, indemnify and hold harmless the City and City Parties from and against any and all present and future liabilities, obligations, orders, claims, demands, causes of action, damages, fines, penalties or loss of any sort, including, but not limited to, reasonable attorneys' fees and litigation expenses (collectively, "**Claims**"), to the extent arising out of or in connection with, or alleged to arise out of or in

connection with, acts, omissions, negligence or willful misconduct of the Developer, its agents, employees, contractors or subcontractors in the performance of the PTPIII Project or this PTPIII Project DA, including all present and future Claims to the extent arising out of or in connection with, or alleged to arise out of or in connection with, the design and construction of the PTPIII Project or with Developer's actual or alleged failure to comply, and require its contractors and subcontractors to comply, with all applicable laws, rules and regulations with respect to such work. This indemnification and agreement to defend and hold harmless shall extend to injuries to persons and damages or taking of property resulting from any such Claim, and in addition, shall extend to injuries to adjacent property owners as a consequence of any such Claim. This indemnification and agreement to defend and hold harmless does not apply to the extent any Claim is the result of the willful misconduct or sole or active negligence of the City or any City Party. Developer's obligations under this Section 12 shall survive the expiration or termination of this PTPIII Project DA. City's exercise of the option to purchase the Workforce Project shall not constitute an assumption by the City of any responsibility for any Claims, damage, or liability for which Developer has agreed to indemnify the City pursuant to this Section.

13. Notices. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Developer as follows:

If to the City:

Community Development Director
City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: Curtis Banks
Telephone: (650) 286-3225
Facsimile: (650) 286-3589

City Attorney
939 Laurel Street, Suite D
San Carlos, CA 94070
Attention: Jean Savaree
Telephone: (650) 593-3117

If to Developer:

Pilgrim Triton Phase III FC LP
c/o Sares Regis
901 Mariners Island Boulevard, Suite 700
San Mateo, CA 94404
Attn: Mark Kroll
Telephone : (650) 377-5702

With Copies to:

Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94109
Attention: Tamsen Plume

Telephone: (415) 743-6900

Notices to be deemed effective if delivered by certified mail return receipt requested, commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Party.

14. Effective Date. The Effective Date of this PTPIII Project DA shall be the later of (1) the date that is thirty (30) days after the enacting Ordinance is adopted, or (2) the date this PTPIII Project DA is fully executed by the Parties ("**Effective Date**"). This PTPIII Project DA shall be recorded in the Official Records no later than ten (10) days after the Effective Date.

15. Miscellaneous.

(a) Restriction on Transfers and Assignments. The concurrent development of the Market Rate Project and the Workforce Project is of particular concern to the City. The City has entered into this PTPIII Project DA and the Third Amendment in reliance on Developer's agreement to construct the Workforce Project before, or on substantially the same schedule, as the first townhome units within the Market Rate Project. Accordingly, except as otherwise provided below with respect to Permitted Transfers, Developer shall have no right to transfer title to the Workforce Land separately from the Market Rate Land or vice versa until such time as the Workforce Project has been issued a temporary certificate of occupancy. As used herein the term "**Permitted Transfers**" means and includes transfer(s) of fee title to all or a portion of the PTPIII Property to an Affiliate of Developer; transfer(s) of a beneficial interest in the PTPIII Property or portion thereof to a mortgagee under a mortgage or beneficiary under a deed of trust made in connection with loan(s) for construction of the PTPIII Project; or transfer(s) of fee title to purchasers of completed townhome units. "**Affiliate**" means an entity controlling, controlled by, or under common control with the original named Developer.

(b) Time. Time is of the essence of this PTPIII Project DA.

(c) Compliance with Law. Developer shall carry out, and shall ensure that its contractors and subcontractors carry out, the PTPIII Project work in conformity with all applicable laws, including all applicable state labor laws and standards; the City's zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City of Foster City Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq., Government Code Section 4450 et seq., Government Code Section 11135 et seq., and the Unruh Civil Rights Act, Civil Code Section 51 et seq.

(d) Choice of Law; Venue. The Parties hereto acknowledge that this PTPIII Project DA has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this PTPIII Project DA shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California without reference to its choice of law rules. The exclusive jurisdiction and venue for any legal action arising out of or relating to this PTPIII Project DA shall be in the applicable Court of San Mateo County, California, or, in

the alternative, in cases where Federal jurisdiction is available, in the United States District Court for the Northern District of California.

(e) Construction. Each Party and his, her or its counsel have reviewed and revised this PTPIII Project DA and, therefore, the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this PTPIII Project DA or any document executed and delivered by either Party in connection with the transactions contemplated by this PTPIII Project DA. The captions in this PTPIII Project DA are for convenience of reference only and shall not be used to interpret this PTPIII Project DA.

(f) Terms Generally. The defined terms in this PTPIII Project DA shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The term "person" includes individuals, corporations, partnerships, trusts, other legal entities, organizations and associations, and any government or governmental agency or authority. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written."

(g) Further Assurances. Developer and City agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this PTPIII Project DA.

(h) Partial Invalidity. If any provision of this PTPIII Project DA is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this PTPIII Project DA and this PTPIII Project DA shall remain in full force and effect and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

(i) Waivers. No waiver of any provision of this PTPIII Project DA or any breach of this PTPIII Project DA shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this PTPIII Project DA or any other or subsequent breach of this PTPIII Project DA.

(j) Relationship Between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the PTPIII Project. Developer shall indemnify, protect, hold harmless and defend City from any Claims made against City arising from a claimed relationship of partnership or joint venture between City and Developer with respect to the development, operation, maintenance or management of the PTPIII Project. Developer's obligations under this Section 15(j) shall survive the expiration or termination of this PTPIII Project DA.

(k) City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

(l) Amendment. This PTPIII Project DA may not be amended or modified except by a written instrument signed by Developer and City.

(m) Integration. This PTPIII Project DA, together with the Third Amendment, and Regulatory Agreement and Purchase Agreement once executed, constitute the entire and integrated agreement between Developer and City relating to the terms on which City has granted Developer the vested right to develop the PTPIII Project and supersedes all prior agreements, understandings, offers and negotiations, oral or written, with respect to Developer's right to develop the PTPIII Project.

(n) Recitals and Exhibits. The Recitals and Exhibits to this PTPIII Project DA are a substantive part hereof and are hereby incorporated herein by reference.

(o) Counterparts. This PTPIII Project DA may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

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

“CITY”

City of Foster City, a municipal corporation

By: _____

Jeff Moneda, City Manager

[signature must be notarized]

ATTEST:

By: _____

Priscilla Tam, City Clerk

APPROVED AS TO FORM:

By: _____

Jean B. Savaree, City Attorney

“DEVELOPER”

PILGRIM-TRITON PHASE III FC LP,

a Delaware limited partnership

By: RHBA Pilgrim Triton PTPIII FC, LLC, a
Delaware limited liability company

Its: Sole Member

By: Regis Homes Bay Area, LLC, a
Delaware limited liability company

Its: Managing Member

By: _____

Name: _____

Title: _____

[signature must be notarized]

ACKNOWLEDGMENTS

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

STATE OF CALIFORNIA)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature: _____ (seal)

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

STATE OF CALIFORNIA)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT 1

MARKET RATE LAND

[To be inserted]

EXHIBIT 2

WORKFORCE LAND

[To be inserted]

EXHIBIT 3

PURCHASE AGREEMENT

[To be inserted]

EXHIBIT 4

REGULATORY AGREEMENT

[To be inserted]

EXHIBIT 5

DIAGRAM OF OPEN SPACE EASEMENT AREA

[To be inserted]

[Form of] PURCHASE AGREEMENT

By and Between

PILGRIM TRITON PHASE III FC LP,
as Seller

and

CITY OF FOSTER CITY,
as Buyer

_____, 201__

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Exhibit A	Legal Description of the Property
Exhibit B	Escrow Instructions
Exhibit C	Form of Grant Deed
Exhibit D	Form of Certificate of Acceptance
Exhibit E	Form of Developer's Closing Certificate
Exhibit F	Form of Certificate of Non-Foreign Status

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") dated for reference purposes only _____, 201__, is entered into by and between the City of Foster City, a California municipal corporation ("**City**") and Pilgrim Triton Phase III FC LP, a Delaware limited liability partnership ("**Developer**"). City and Developer may be collectively referred to herein as a "**Party**," and collectively as the "**Parties**."

RECITALS

A. AMB Institutional Alliance Fund III, L.P., a Delaware limited partnership, Foster City Executive Park Partners, a California general partnership, and The Northwestern Mutual Life Insurance Company, a Wisconsin corporation entered into a Master Development Agreement with the City effective February 11, 2010 (Recorder's Document No. 2010-017940), to facilitate the redevelopment of that certain real property consisting of approximately 20.75 acres within the City of Foster City, County of Mateo, State of California, which is legally described in Exhibits A-1, B-1 and C-1 to the Development Agreement and shown on the maps attached to the Development Agreement as Exhibits A-2, B-2 and C-2 (collectively, the "**Site**"). The Master Development Agreement has been amended by a First Minor Amendment dated June 29, 2016 (Recorder's Document No. 2016-066621), a Second Minor Amendment dated May 16, 2018 (Recorder's Document No. 2018-038122) and a Third (Major) Amendment dated _____, 2018, and recorded in the Official Records concurrently herewith (Recorder's Document No. 2018-_____). The original Master Development Agreement, as amended by the First, Second and Third Amendments, is hereinafter referred to as the "**Master Development Agreement**".

B. Developer is the fee owner of an approximately 4.78 acre portion of the Site depicted and more particularly described in "Exhibit 1" to the PTPIII Project DA (defined below) ("**PTPIII Property**").

C. Developer entered into a project specific Development Agreement with respect to the PTPIII Property dated _____, 2018 (Recorder's Document No. _____) ("**PTPIII Project DA**"), which provides, among other things, for City to grant Developer the vested right to develop the Market Rate Project (as defined in the PTPIII Project DA), in exchange for Developer's agreement to provide certain community benefits to City, including but not limited to, agreement to design and construct, and grant to City the option to purchase the Workforce Project (as defined in the PTPIII Project DA on that certain 0.6 acre portion of the PTPIII Property as defined and generally depicted in Exhibit 3 to the PTPIII Project DA and as legally described on Exhibit A to this Agreement (the "**Workforce Land**")), together with (i) all of Developer's right, title and interest in, under and to tangible personal property, equipment, supplies, and fixtures located upon the Workforce Land or otherwise within the Workforce Project, or owned by Developer and used in connection with the operation and ownership of the Workforce Project ("**Personal Property**"); (ii) to the extent assignable, all of Developer's interest in any intangible property used or useful in connection with the foregoing, including, without limitation, any and all contract rights, warranties (including, without limitation, roof and construction warranties, provided that any fees to assign such warranties will be paid by Developer), guaranties, licenses, permits, entitlements, governmental approvals, certificates of

occupancy, in each case, which benefit or relate to the Workforce Land, the Workforce Project, and/or the Personal Property (the “**Intangible Personal Property**”). The Workforce Land, the Workforce Project, the Personal Property, and the Intangible Personal Property are sometimes collectively hereinafter referred to as the “**Property**.”

D. Pursuant to Section ____ of the PTPIII Project DA: on _____, 201__, the Developer Commenced Construction of the Workforce Project, on _____, 20____, the City issued the final inspection of the foundation of the Workforce Project, on _____, the Developer issued the Option Notice to the City, and on _____, 201__ by Resolution No. _____, the City Council authorized the City Manager to exercise the City’s option to purchase the Property and execute this Agreement.

E. As contemplated by the PTP III DA, Developer and City now desire to enter into this Agreement setting forth the terms under which City, upon completion of the Workforce Project, shall purchase the Workforce Project from Developer.

A G R E E M E N T

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, Developer and City agree as follows:

ARTICLE 1

PURCHASE PRICE

1.1 Amount and Payment. At the Closing on the Closing Date, City shall pay the Purchase Price for the Property to Developer in cash or immediately available funds. The total purchase price (the “**Purchase Price**”) for the Property shall be the lesser of:

A. Seven Million Dollars (\$7,000,000); or

B. The sum of Six Million Seven Hundred Thousand Dollars (\$6,700,000) plus the product obtained by multiplying \$6,700,000 by the percentage change (increase or decrease) in Area Median Income (defined below) between the Effective Date of the PTPIII Project DA and the date of City’s exercise of the Option pursuant to the PTPIII Project DA. By way of example, if Area Median Income (family of four) as of the Effective Date is \$118,400 and Area Median Income (family of four) as of the date of City’s exercise of the Option is \$121,400, then Area Median Income will have increased by 2.53% and the Purchase Price shall be \$6,869,510 [i.e. $\$6,700,000 \times 1.0253 = \$6,869,510$ which is less than \$7,000,000]. By way of further example, if Area Median Income as of the Effective Date is \$118,400 and Area Median Income as of the date on which City exercises the Option is \$125,400 then Area Median Income will have increased by 5.91% and the Purchase Price shall be \$7,000,000 [i.e. $\$6,700,000 \times 1.0591 = \$7,095,970$ which is greater than \$7,000,000]. For purposes of this Agreement, “**Area Median Income**” means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community

Development in Section 6932 of Title 25 of the California Code of Regulations or successor provision.

ARTICLE 2

COMPLETION OF SALE

2.1 Place and Date. The purchase and sale of the Property shall be completed in accordance with Article 8 hereof ("**Closing**"). Subject to extension in the event of casualty restoration related delays as set forth in Article 10 below, the Closing shall occur within ten (10) days of the satisfaction or waiver of all applicable conditions precedent to Closing under Article 7 ("**Closing Date**"), or on such other date as Developer and City may mutually agree in writing. Prior to the Closing Date, Developer and City each shall give such supplemental written escrow instructions, if any, consistent with this Agreement, required by the Escrow Holder for the Closing in accordance with this Agreement.

ARTICLE 3

TITLE TO THE PROPERTY

3.1 Property. The Workforce Project and Workforce Land shall be conveyed to City by Developer by a grant deed, substantially in the form attached hereto as Exhibit B ("**Grant Deed**"), subject only to (a) liens to secure payment of current, unpaid real estate taxes and assessments; (b) such title matters (other than liens to secure payment of real estate taxes and assessments, including supplemental taxes) affecting the Workforce Project and Workforce Land created by or with the written consent of City; (c) the covenants and restrictions on use set forth in the Regulatory Agreement; and (d) the following matters shown as exceptions in the preliminary report of title dated _____, 2018 (the "**Preliminary Report**") prepared by _____ ("**Title Company**") for City that City hereby approves: _____, _____, and _____; and (d) any matter City creates (collectively, the "**Permitted Exceptions**").

ARTICLE 4

REVIEW OF THE PROPERTY

4.1 Delivery of Documents. Concurrently with Developer's delivery of Developer's Substantial Completion Notice, Developer shall deliver to City for City's review the following documents and materials (collectively, "**Documents and Materials**");

- A. All currently-effective warranties and licenses with respect to the Workforce Project;
- B. All architectural and engineering plans and drawings, including As-Built drawings for the Workforce Project; and
- C. Such additional information as may be reasonably requested by City that is directly relevant to the Property.

4.2 City Diligence. The City shall be solely responsible, at its option, to prepare an ALTA Survey of the Workforce Land.

Upon at least 48 hours' prior notice to Developer, City and its Licensee Parties shall have reasonable access to the Workforce Project and Workforce Land during normal business hours to conduct due diligence. Such notice shall describe the scope of the due diligence City intends to conduct during City access to the Workforce Project and Workforce Land. Seller shall have the right to have a representative present during any visits to or inspections of the Property by City or any Licensee Parties. City will conduct its due diligence in a manner which is not disruptive to any Developer's normal operation of the Workforce Project and Workforce Land, including sales activity.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 Developer. The representations and warranties of Developer in this Section 5.1 and in Developer's Closing Certificate (as defined in Section 5.1.H) are a material inducement for City to approve the PTPIII Project DA and enter into this Agreement. As used in this Section 5.1, the phrase "**Developer's knowledge**" or words of similar import shall mean actual knowledge of David Hopkins on the date such representations and warranties are made. Developer represents and warrants to City as of the date of this Agreement as follows:

A. Developer is the sole owner of fee title to the Workforce Project and Workforce Land and has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated herein in the execution, delivery and performance of this Agreement. Furthermore, the execution and delivery of this Agreement has been duly authorized and no other action by Developer is required in order to make it a valid and binding contractual obligation of Developer. The individual(s) executing this Agreement on behalf of Developer are authorized to do so.

B. Developer has not previously sold, transferred or conveyed the Property, or granted to any other person or entity any right or interest in all or any part of the Property and Developer has not entered into any executory contracts for the sale of all or any part of the Property (other than this Agreement), nor do there exist any rights of first refusal or options to purchase the Property, other than this Agreement. This does not apply to instruments necessary for construction financing, or any easements or licenses granted to the City or to utilities necessary and appropriate to the construction and operation of the PTPIII Project.

C. There is no litigation, arbitration or other legal or administrative suit, action, proceeding or investigation of any kind pending, or to Developer's knowledge threatened, against or involving Developer relating to the Property or any part thereof.

D. Developer is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder.

E. Developer has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with the sale of the Property to City or this Agreement.

F. To Developer's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on or about the Workforce Land at any time.

G. To Developer's knowledge after due inquiry, no Hazardous Substances are present on, under or about the Workforce Project or Workforce Land, except as disclosed to City in writing.

H. Developer has complied with all of Developer's covenants in Article 6 below.

I. At the Closing, Developer shall execute and deliver to City a Developer's Closing Certificate ("**Developer's Closing Certificate**") in the form of Exhibit G attached hereto, certifying to City that all Developer's representations and warranties are true and correct on and as of the Closing Date, with only such exceptions therein as are necessary to reflect facts or circumstances arising between the date of this Agreement and the Closing Date which would make any such representation or warranty untrue or incorrect on and as of the Closing Date.

All of the representations and warranties of Developer set forth in this Agreement and the documents delivered by Developer at Closing will survive Closing for a period of two (2) years after the Closing ("**Survival Period**"). No claim for a breach of any representation or warranty of Developer will be actionable or payable if City does not notify Developer in writing of such breach prior to the expiration of the Survival Period and commence a "legal action" thereon within ninety (90) days of delivery of such written notice.

5.2 City. The representations and warranties of City in this Section 5.2 are a material inducement for Developer to enter into this Agreement. Such representations and warranties shall survive the Closing for the Survival Period. City represents and warrants to Developer as of the date of this Agreement as follows:

A. City is a municipal corporation organized and validly existing under the laws of the State of California. City has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by City have been duly and validly authorized by all necessary action on the part of City and all required consents and approvals have been duly obtained.

B. City has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement.

5.3 Discovery of Inaccuracy. If, after the date of this Agreement, either Party discovers any inaccuracy in any representation or warranty under this Agreement, whether made by that Party or the other Party, the discovering Party shall promptly notify the other Party in a written notice setting forth the particular representation or warranty which is inaccurate, and the nature of the inaccuracy discovered.

ARTICLE 6

DEVELOPER COVENANTS REGARDING PROPERTY

6.1 Developer. Developer covenants and agrees with City as follows:

A. Between the date of this Agreement and the Closing Date, Developer shall maintain the Workforce Project and Workforce Land in good condition, repair and working order as applicable to an active construction site, comply in all material respects with all covenants, conditions, restrictions, laws, statutes, rules, regulations and ordinances applicable to the Workforce Project and Workforce Land and immediately give City copies of all notices received by Developer asserting any violation of any covenants, conditions, restrictions, laws, statutes, rules, regulations or ordinances applicable to the Workforce Project and Workforce Land .

B. Between the date of this Agreement and the Closing Date, except as necessary and appropriate for typical construction purposes and in compliance with all applicable laws, labels and instructions for use, handling and disposal, Developer shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any Hazardous Substances in, on or under the Workforce Project and Workforce Land , or use the Workforce Project and Workforce Land for any such purposes, or release any Hazardous Substances into any air, soil, surface water or groundwater comprising the Workforce Land, or permit any person using or occupying the Workforce Project or Workforce Land or any part thereof to do any of the foregoing. Between the date of this Agreement and the Closing Date, Developer shall comply, and shall use reasonable efforts to cause all persons using or occupying the Workforce Project and Workforce Land or any part thereof to comply, with all Environmental Laws applicable to the Workforce Project and Workforce Land, or the use or occupancy thereof, or any operations or activities therein or thereon. Immediately after Developer obtains any actual knowledge that any Hazardous Substances may be present or any unlawful Release or threatened Release of Hazardous Substances may have occurred in, on or under the Workforce Project or Workforce Land or that any violation of any Environmental Laws may have occurred at the Workforce Land , Developer shall give written notice thereof to City with a reasonably detailed description of the event, occurrence or condition in question. Developer shall immediately furnish to City copies of all written communications received by Developer from any person (including notices, complaints, claims or citations that any Release or threatened Release of any Hazardous Substances or any violation of any Environmental Laws has actually or allegedly occurred) or given by Developer to any person concerning any past or present Release or threatened Release of any Hazardous Substances in, on or under the Workforce Land or any past or present violation of any Environmental Laws at the Workforce Land . For purposes of this Agreement, **"Environmental Laws"** shall mean all federal, state and local laws, ordinances, rules and regulations in effect on the date of this Agreement, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Water Act, 33 U.S.C. § 1251, et seq., the Hazardous Substance Account Act, California Health and Safety Code § 25300, et seq., the Hazardous Waste Control Law, California Health and Safety Code § 25100, et seq., the Medical Waste Management Act,

California Health and Safety Code § 25015, et seq., and the Porter-Cologne Water Quality Control Act, California Water Code § 13000, et seq.

C. Developer shall supply City with all warranty and guarantee documents relative to equipment and materials incorporated in the Workforce Project and guaranteed by their suppliers or manufacturers. Developer shall ensure that all warranties and guarantees are assignable, and shall assign all such warranties and guarantees to City on or before the Closing Date.

D. No lead or asbestos-containing materials will be installed on or about the Workforce Land or in the Workforce Project at any time during Developer's construction of the Workforce Project. If any lead or asbestos-containing materials are discovered on the Workforce Land, Developer will make an immediate written disclosure to City.

E. No electrical transformers, light fixtures with ballasts or other equipment containing PCBs will be installed on or about the Workforce Land or in the Workforce Project at any time during Developer's construction of the Workforce Project.

F. Developer shall have constructed the Workforce Project in conformance with all applicable requirements of federal, state and local laws; applicable construction codes and standards; all City conditions of approval including all requirements of the PTPIII Project DA and the Specific Development Plan/Use Permit for the PTPIII Project. All construction work shall be in accordance with generally accepted professional standards of good and sound construction practices. Each item of material and equipment incorporated therein shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, engineering, materials, construction and workmanship.

G. Developer shall have obtained and maintained all necessary land use entitlements, permits and licenses for the design, construction and development of the Workforce Project, including by applying for and paying the business tax and registration tax for a business license, in accordance with the Foster City Municipal Code. Developer shall have entitled, designed and constructed the Workforce Project in compliance with all applicable local, state, and federal laws, including City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City's Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

H. To the extent Developer discovers any Hazardous Substances on, under or about the Workforce Land, Developer shall make immediate written disclosure to City of such fact and remediate the Hazardous Substances and obtained the issuance of closure letters without any requirement of further remedial work from all governmental agencies that may assert jurisdiction over the remediation of the Workforce Parcel and provide copies of such closure letters to City. As used herein, "**Hazardous Substances**" means any substance, material, or waste which is or becomes regulated by any local or regional governmental authority, the State of California, or the United States Government, including, but not limited to, any material or

substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

I. Developer shall pay, when due, all persons furnishing labor or materials in connection with any work to be performed on the Workforce Project, and shall keep the Workforce Land free and clear of any mechanics' liens, property liens, or bonds.

J. Between the date of this Agreement and the Closing Date, except as otherwise specifically permitted in this Agreement, Developer shall not in any manner sell, convey, assign, transfer, encumber or otherwise dispose of the Workforce Project or Workforce Land or any part thereof or interest therein. Without limiting the foregoing, Developer shall not enter into any agreement or alter the condition of title to the Workforce Project or Workforce Land if the same would affect the Workforce Project or Workforce Land or City after the Closing without City's prior consent. If City so consents, such encumbrance shall become a Permitted Exception (as provided in Section 3.1). This does not apply to instruments necessary for construction financing, or any easements or licenses granted to the City or to utilities necessary and appropriate to the construction and operation of the PTPIII Project.

K. Developer will create and provide to the City a manual which will detail the operation and maintenance of all systems at the Workforce Project and Workforce Land, including the landscaping and parking areas ("**O&M Manual**"). No later than Substantial Completion of the Workforce Project, Developer will provide a preliminary O&M Manual to the City for its review and comment. Within thirty (30) days of receipt, the City will provide any comments or requests for additional information to be included in the O&M Manual. The City shall provide comments with reasonable specificity and the City's approval of the O&M Manual shall not be unreasonable withheld or delayed. At least ten (10) days prior to the Closing Date, Developer will provide City with a City-approved O&M Manual. Developer will also coordinate with City to allow City representatives to participate in operational and maintenance training of the Workforce Project' systems and equipment.

Developer's covenants in this Article 7 shall survive the Closing for the Survival Period. No claim for a breach of any covenant of Developer will be actionable or payable if City does not notify Developer in writing of such breach prior to the expiration of the Survival Period and commence a "legal action" thereon within ninety (90) days of delivery of such written notice.

ARTICLE 7

CONDITIONS PRECEDENT

7.1 Developer. Developer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the conditions (or Developer's waiver in writing thereof) set forth in this Section 7.1 for Developer's benefit on or prior to the dates designated below for the satisfaction of such conditions, or the Closing in the absence of a specified date. As of the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing.

A. On the Closing Date, City shall not be in material default, following notice and expiration of applicable cure periods, in the performance of any covenant or agreement to be performed by City under this Agreement.

B. Prior to the Closing Date, City shall have deposited into Escrow the Purchase Price, plus City's share of Closing costs and prorations.

C. Prior to the Closing Date, City shall have executed, acknowledged (where applicable) and delivered to Escrow each of the items required to be delivered by City pursuant to this Agreement.

7.2 City. City's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the conditions (or City's waiver in writing thereof) set forth in this Section 7.2 for City's benefit on or prior to the dates designated below for the satisfaction of such conditions, or the Closing in the absence of a specified date. As of the Closing, any such condition that has not been satisfied shall be treated as having been waived in writing.

A. As of the Closing, Title Company shall have irrevocably committed to issue a standard California Land Title Association ("CLTA") Owner's Policy of Title Insurance to City in an amount reasonably requested by City anticipated to be approximately \$15,000,000, showing title to the Workforce Project and Workforce Land vested in City, subject only to the Permitted Exceptions. City shall pay all expenses of issuing the Title Policy, including (if City elects to have Escrow Holder issue an American Land Title Association ("ALTA") Extended Coverage Owner's Policy of Title Insurance), the expense of such ALTA premium increment and any survey costs associated with such ALTA policy. In addition, City shall pay for any endorsements to the Title Policy. City's ability to obtain an ALTA policy shall not be a condition to the Closing.

B. At least 10 business days prior to the Closing Date, Developer shall have executed, acknowledged (where applicable) and delivered to Escrow the Grant Deed and each of the other items required to be delivered by Developer pursuant to this Agreement.

C. There shall be an absence of any condemnation, environmental or other pending governmental or any type of administrative or legal proceedings with respect to the Property, and no casualty event shall have occurred with respect to the Workforce Project, which would materially and adversely affect City's intended uses of the Workforce Land or Workforce Project or the value of the Property.

D. Prior to the Closing Date, the Workforce Project shall be complete to the satisfaction of the City as evidenced by issuance of a final certificate of occupancy.

E. Prior to the Closing Date, Developer has provided City with the City-approved O&M Manual.

F. On the Closing Date, Developer shall not be in material default, following notice and expiration of applicable cure periods, in the performance of any covenant or agreement to be performed by Developer under this Agreement.

G. On the Closing Date, all representations and warranties made by Developer in Section 5.1 hereof shall be true and correct as if made on and as of the Closing Date and City shall have received Developer's Closing Certificate, executed by Developer, in which Developer certifies to City that all representations and warranties made by Developer in Section 5.1 hereof are true and correct on and as of the Closing Date, with only such exceptions as are specified in Developer's Closing Certificate.

ARTICLE 8

CLOSING

8.1 Procedure. Developer and City shall cause the following to occur at the Closing on the Closing Date:

A. The Grant Deed, duly executed and acknowledged by Developer, and a Certificate of Acceptance, if required, duly executed and acknowledged by City, shall be recorded in the Official Records of the County of San Mateo, California

B. Two (2) counterparts of a General Assignment, Assignment of Contracts, and Bill of Sale in the form of Exhibit I attached hereto (the "**General Assignment**") shall be duly executed by Developer and City.

C. Developer shall date as of the Closing Date, execute and deliver to City (i) Developer's Closing Certificate, (ii) a Certificate of Non-Foreign Status in accordance with Section 1445 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder in the form attached hereto as Exhibit H, and (iii) satisfactory evidence that no California withholding of tax is required with respect to the sale of the Property.

D. City shall pay to Developer the total Purchase Price for the Property, less Developer's share of prorations and Closing costs.

E. The Title Company shall issue to City the Title Policy.

F. The Title Company shall file the information return for the sale of the Property required by Section 6045 of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations thereunder.

8.2 Possession. Developer shall deliver title to and possession of the Property to City in the condition required by Section 3.1 on the Closing Date.

8.3 Closing Costs. City shall pay escrow fees, and Title Policy costs. City and Developer shall each pay all legal and professional fees and fees of other consultants incurred by City and Developer, respectively. Any other Closing costs which are not specifically allocated to City or Developer under this Agreement shall be apportioned in the manner customary in the County.

8.4 Prorations. As the City is a political subdivision of the State of California, it is a tax-exempt entity and, therefore, any real property taxes, bonds and assessments that are a lien customarily paid with real property taxes shall not be prorated. Developer shall have the sole right, after Closing, to apply to the San Mateo County Tax Collector for refund of any excess property taxes which have been paid by Developer with respect to the Property. This refund would apply to the period after City acquisition of the Property, pursuant to Revenue and Taxation Code Section 5096.7. County transfer taxes, if applicable, shall be paid by Developer. All income from the Property, if any, and all utilities, maintenance charges and similar expenses of the Property, determined using the accrual method of accounting, shall be prorated between Developer and City as of the Closing Date and, to the extent of information then available, such prorations shall be made at the Closing. Developer and City shall use their best efforts prior to the Closing Date to prepare a schedule of prorations covering as many items to be prorated as practicable so such prorations can be made at the Closing. Such prorations shall be adjusted, if necessary, and completed outside escrow after the Closing as soon as final information becomes available. Developer and City agree to cooperate and to use their best efforts to complete such prorations no later than thirty (30) days after the Closing Date. Monthly income and expense items shall be prorated on the basis of a thirty (30) day month. Such income and expenses of the Property for the period before the Closing Date shall be for the account of Developer and such income and expenses for the period on and after the Closing Date shall be for the account of City. Developer shall pay all invoices for goods furnished or services supplied, and other expenses relating to the Property that are allocable to the period before the Closing Date. Developer shall promptly pay to City any income (including any real property tax or assessment refunds) received by Developer either before or after the Closing Date that is allocable to the period on or after the Closing Date. City shall promptly pay to Developer any income (including any real property tax or assessment refunds) received by City after the Closing Date that is allocable to the period before the Closing Date.

ARTICLE 9

WARRANTY AND INDEMNITY

9.1 Warranty. If, within a period of two (2) years following the issuance of final certificate of occupancy of the Workforce Project ("**Warranty Period**"), all or any portion of the Workforce Project or other ancillary work of improvements constructed or installed in

connection with the Workforce Project fails due to failure of or defect in design, materials or workmanship, Developer shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work to the satisfaction of the City Building Official. Developer acknowledges and agrees that Developer shall be responsible and liable for the design and construction of the Workforce Project and that the City shall not be liable for any acts or omissions in approving, reviewing, checking, correcting, or modifying any improvement plans or related specifications or in approving, reviewing or inspecting any work or construction. To the extent that Developer may assert a right to recovery against another party in connection with the design and construction of the Workforce Project, City shall be a third party beneficiary of such recovery right. Developer's covenants in this Section 10.1 shall survive the Closing. No claim for a breach of Developer's warranty obligations will be actionable or payable if City does not notify Developer in writing of such breach prior to the expiration of the Warranty Period and commence a "legal action" thereon within ninety (90) days of delivery of such written notice.

9.2 Indemnity. Developer shall defend (with counsel reasonably acceptable to City) indemnify and hold harmless City and its elected officials, officers, agents, employees and contractors (collectively, "**City Parties**") from and against any and all claims for any injury to persons or property occasioned by reason of the acts, omissions, negligence or willful misconduct of the Developer, its agents, employees, contractors or subcontractors in connection with development of the Workforce Project. Developer further agrees to protect, defend, indemnify and hold harmless the City and City Parties from and against any and all present and future liabilities, obligations, orders, claims, demands, causes of action, damages, fines, penalties or loss of any sort, including, but not limited to, reasonable attorneys' fees and litigation expenses (collectively, "**Claims**"), to the extent arising out of or in connection with, or alleged to arise out of or in connection with (i) any breach by Developer of the representations and warranties set forth in Section 6.1 above; (ii) any breach by Developer of the Developer covenants set forth in Section 7 above; (iii) Developer's failure to comply with the warranty period repair obligations set forth in Section 10.1, above; and (iv) Developer's actual or alleged failure to comply, and require its contractors and subcontractors to comply, with all applicable laws, rules and regulations with respect to development of the Workforce Project. This indemnification and agreement to defend and hold harmless shall extend to injuries to adjacent property owners as a consequence of the acts, omissions, negligence or willful misconduct of the Developer, its agents, employees, contractors or subcontractors. This indemnification and agreement to defend and hold harmless does not apply to the extent any Claim is the result of the willful misconduct or sole or active negligence of the City or City Parties. Developer's indemnity obligations under this Section 10.2 shall survive the Closing; provided, however, Developer shall not be obligated to indemnify City or City Parties with respect to any Claims that are first tendered to Developer after expiration of the Survival Period.

ARTICLE 10

DAMAGE AND DESTRUCTION

10.1 Damage or Destruction. In the event of any damage to or destruction of the Property before the Closing Date, Developer, at its expense, shall promptly restore, repair and reconstruct the Workforce Project to the same level of quality and standards as set forth in the

original approved building plans subject only to such modifications as may be necessary to comply with changes in the law. In the event of such casualty the Outside Date for Closing shall be extended as reasonably necessary to allow for the completion of such restoration, repair and reconstruction.

ARTICLE 11

GENERAL

11.1 Notices. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Developer as follows:

If to the City:

Community Development Director
City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: Curtis Banks
Telephone: (650) 286-3225
Facsimile: (650) 286-3589

City Attorney
939 Laurel Street, Suite D
San Carlos, CA 94070
Attention: Jean Savaree
Telephone: (650) 593-3117
Facsimile: (650) 637-1401

If to Developer:

Pilgrim Triton Phase III FC LP
c/o Sares Regis
901 Mariners Island Boulevard, Suite 700
San Mateo, CA 94404
Attn: Mark Kroll
Telephone : (650) 377-5702

With Copies to:

Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94109
Attention: Tamsen Plume
Telephone: (415) 743-6900
Facsimile: (415) 743-6910

Notices to be deemed effective if delivered by certified mail return receipt requested, or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Party.

11.2 Choice of Law. The Parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The Parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California without reference to its choice of law rules. The Parties hereto agree that the exclusive jurisdiction and venue for any legal action arising out of or relating to this Agreement shall be in the applicable Court of San Mateo County, California, or, in the alternative, in cases where Federal jurisdiction is available, in the United States District Court for the Northern District of California.

11.3 Construction. Developer and City acknowledge that each Party and his, her or its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either Party in connection with the transactions contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

11.4 Terms Generally. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The term "person" includes individuals, corporations, partnerships, trusts, other legal entities, organizations and associations, and any government or governmental agency or authority. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written."

11.5 Further Assurances. From and after the date of this Agreement, Developer and City agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement.

11.6 Partial Invalidity. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.

11.7 Waivers. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

11.8 Effective Date. The effective date of this Agreement means the date upon which the City has exercised its Option to purchase the Property pursuant to Section 5(c) of the PTPIII Project DA (the "**Effective Date**").

11.9 Attorneys' Fees. In the event any legal action is commenced to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses incurred.

11.10 Miscellaneous The exhibits attached to this Agreement are made a part of this Agreement.

B. Unless there is a specific reference to business days in this Agreement (which shall refer to days other than Saturdays, Sundays and legal holidays), any reference to days in this Agreement shall be deemed to refer to calendar days.

C. Without in any way limiting the restrictions on transfer set forth in Section 15(a) of the PTPIII Project DA, this Agreement shall inure to the benefit of, and be binding upon the heirs, administrators, successors, assigns and transferees of the parties, and constitute a covenant running with the Property.

D. Time is of the essence of this Agreement.

E. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

F. This Agreement may not be amended or modified except by a written instrument signed by Developer and City.

G. This Agreement, the Phase C DA, the Regulatory Agreement, and the Third Amendment (Major) to Master Development Agreement constitute the entire and integrated agreement between Developer and City relating to Developer's grant to City on an option to purchase the Property and supersedes all prior agreements, understandings, offers and negotiations, oral or written, with respect to the option to purchase the Property

H. From and after the date of this Agreement, Developer and City agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement.

I. If any provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision; unless the result would be contrary to the Parties' material purposes of this Agreement.

J. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

K. This Agreement may not be amended or modified except by a written instrument signed by Developer and City.

L. Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, this Agreement shall be interpreted as though drafted by both Parties and neither Party may rely upon Civil Code Section 1654 to interpret any uncertainty in the meaning of the Agreement.

[Signatures on Following Page]

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

CITY:

CITY OF FOSTER CITY, a California
municipal corporation

By: _____
_____, City Manager
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Jean B. Savaree, City Attorney

ATTEST:

By: _____
Priscilla Tam, City Clerk

DEVELOPER:

PILGRIM-TRITON PHASE III FC LP,
a Delaware limited partnership

By: RHBA Pilgrim Triton PTPIII FC, LLC, a
Delaware limited liability company

Its: Sole Member

By: Regis Homes Bay Area, LLC, a
Delaware limited liability company

Its: Managing Member

By: _____
Name:

Title:
[signature must be notarized]

EXHIBIT A

LEGAL DESCRIPTION OF WORKFORCE PARCEL

Real property in the City of Foster City, County of San Mateo, State of California, described as follows:

[To be inserted]

EXHIBIT B

ESCROW INSTRUCTIONS

Escrow Holder Name
Escrow Holder Address

Date : _____
Escrow Officer : _____
Escrow Number : _____
Property Address/ : _____
Location Foster City, California
APN(S) : _____

In accordance with the provisions of that certain Purchase and Sale Agreement, dated _____, 201__ (hereinafter referred to as the "**Agreement**"), by and between Pilgrim Triton Phase III FC LP, a Delaware limited partnership ("**Developer**"), and the City of Foster City, a California municipal corporation ("**City**"), said Agreement is construed to be your Escrow Instructions as related to any applicable portions thereof. Enclosed is a copy of City's notice of exercise of the Option. Capitalized terms not defined herein shall have the meanings set forth in the Agreement.

Prior to the Closing Date, City shall deposit into Escrow a duly executed and acknowledged Certificate of Acceptance in the form attached to the Agreement as Exhibit F, and Developer shall execute and deliver to you and City a counterpart of these Escrow Instructions and execute, acknowledge (where appropriate) and deliver to you the Grant Deed and such other documents as may be required from Developer to consummate the transaction as set forth in the Agreement. If Developer has failed to timely deposit such documents, then the Closing Date shall automatically be extended by one (1) business day for each business day that Developer is late in making such deposit.

CITY:

CITY OF FOSTER CITY, a California
municipal corporation

By: _____
_____, City Manager
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Jean B. Savaree, City Attorney

ATTEST:

By: _____
Priscilla Tam, City Clerk

DEVELOPER:

PILGRIM-TRITON PHASE III FC LP,
a Delaware limited partnership

By: RHBA Pilgrim Triton PTPIII FC, LLC, a
Delaware limited liability company

Its: Sole Member

By: Regis Homes Bay Area, LLC, a
Delaware limited liability company

Its: Managing Member

By: _____
Name:

Title:
[signature must be notarized]

Escrow Number: _____

Receipt Acknowledged.

The undersigned hereby acknowledges receipt of the foregoing Escrow Instructions and agrees to fully comply therewith.

ESCROW HOLDER:

ESCROW HOLDER NAME

Dated: _____

By: _____

Its: _____

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05611-0021

EXHIBIT C

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

City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: Community Development Director

(Space Above This Line for Recorder's Use Only)
[Exempt from recording fee per Gov. Code § 27383]

GRANT DEED

For valuable consideration, receipt of which is acknowledged, Pilgrim Triton Phase III FC LP, a Delaware limited partnership ("Grantor"), hereby grants to the City of Foster City, a municipal corporation, the real property in the City of Foster City, County of San Mateo, State of California, described in Attachment No. 1 attached hereto and made a part hereof, subject to matters of record.

Dated: _____

GRANTOR:

PILGRIM-TRITON PHASE III FC LP,
a Delaware limited partnership

By: RHBA Pilgrim Triton PTPH FC, LLC, a
Delaware limited liability company

Its: Sole Member

By: Regis Homes Bay Area, LLC, a
Delaware limited liability company

Its: Managing Member

By: _____

Name:

Title:

[signature must be notarized]

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF THE OPTION PROPERTY

Real property in the City of Foster City, County of San Mateo, State of California,
described as follows:

[To be inserted]

ACKNOWLEDGMENTS

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

STATE OF CALIFORNIA)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature: _____ (seal)

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

STATE OF CALIFORNIA)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature: _____ (seal)

Acknowledgments

CERTIFICATE OF ACCEPTANCE

Dated: _____

Signature _____

EXHIBIT G

DEVELOPER'S CLOSING CERTIFICATE

For valuable consideration, receipt of which is acknowledged, Pilgrim Triton Phase III FC LP, a Delaware limited partnership ("**Developer**"), hereby certifies to the City of Foster City, a municipal corporation ("**City**"), that all representations and warranties made by Developer in Section 5.1 of the Option Agreement (the "**Option Agreement**") dated _____, 2018, between Developer and City are true and correct on and as of the date of this Certificate, except as follows:

This Certificate is executed by Developer and delivered to City pursuant to the Option Agreement.

Dated: _____

DEVELOPER:

PILGRIM-TRITON PHASE III FC LP,
a Delaware limited partnership

By: RHBA Pilgrim Triton PTPIII FC, LLC, a
Delaware limited liability company

Its: Sole Member

By: Regis Homes Bay Area, LLC, a
Delaware limited liability company

Its: Managing Member

By: _____
Name:

Title:

[signature must be notarized]

EXHIBIT H

CERTIFICATE OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by Pilgrim Triton Phase III FC LP, a Delaware limited partnership ("**Developer**"), the undersigned hereby certifies the following on behalf of Developer:

1. Developer is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Developer's taxpayer identification number is _____; and
3. Developer's office address is _____, _____, California _____.

Developer understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Developer.

Dated: _____

DEVELOPER:

PILGRIM-TRITON PHASE III FC LP,
a Delaware limited partnership

By: RHBA Pilgrim Triton PTPIII FC, LLC, a
Delaware limited liability company

Its: Sole Member

By: Regis Homes Bay Area, LLC, a
Delaware limited liability company

Its: Managing Member

By: _____
Name:

Title:

[signature must be notarized]

EXHIBIT I

GENERAL ASSIGNMENT

This General Assignment, Assignment of Contracts and Bill of Sale ("Assignment") is made as of the ____ day of _____, 201_ ("Assignment Date"), by Pilgrim Triton Phase III FC LP, a Delaware limited liability partnership (the "Assignor"), and City of Foster City, a California municipal corporation (the "Assignee").

A. Pursuant to that certain Purchase and Sale Agreement dated as of _____, 20__ by and between Assignor and Assignee (the "Purchase Agreement"), Assignee has this day acquired from Assignor the Property. Capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement.

B. Under the Purchase Agreement, Assignor is obligated to assign to Assignee all of Assignor's right, title and interest in and to (i) the Personal Property; and (ii) the Intangible Personal Property.

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

1. General Assignment. Assignor hereby assigns, transfers and sets over unto Assignee, without representation or warranty of any kind, except as expressly set forth in the Purchase Agreement, and Assignee hereby accepts from Assignor, any and all of Assignor's right, title and interest in and to the Personal Property and the Intangible Personal Property.

2. Bill of Sale. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby GRANT, SELL, CONVEY, TRANSFER AND DELIVER to Buyer, without any warranty of any kind (except as otherwise expressly set forth in the Purchase Agreement), any and all of Seller's rights, title and interests in and to the Personal Property and the Intangible Personal Property. From and after the date of this Assignment, it is intended by the parties that Buyer and its successors and assigns shall have the right to use, have, hold and own the Personal Property and the Intangible Personal Property forever.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which shall together be deemed one document.

4. Successors and Assigns. This Assignment and the provisions hereof shall inure to the benefit of and be binding upon the parties to this Assignment and their respective successors, heirs and permitted assigns.

5. No Third Party Beneficiaries. Assignor and Assignee do not intend, and this Assignment shall not be construed, to create a third-party beneficiary status or interest in, nor give any third-party beneficiary rights or remedies to, any other person or entity not a party to this Assignment.

6. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California.

7. Limited Liability. This Assignment is made without any express or implied representation or warranty of any kind or nature other than those representations and warranties expressly made by Assignor in the Purchase Agreement, which representations and warranties by Assignor shall survive only for the period provided in, and are subject to all of the limitations set forth in, the Purchase Agreement

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, Assignor and Assignee have caused this instrument to be executed as of the date above-written.

ASSIGNEE:

CITY OF FOSTER CITY, a California
municipal corporation

By: _____
_____, City Manager

APPROVED AS TO FORM:

By: _____
Jean B. Savaree, City Attorney

ATTEST:

By: _____
Priscilla Tam, City Clerk

ASSIGNOR:

PILGRIM-TRITON PHASE III FC LP,
a Delaware limited partnership

By: RHBA Pilgrim Triton PTPIII FC, LLC, a
Delaware limited liability company

Its: Sole Member

By: Regis Homes Bay Area, LLC, a
Delaware limited liability company

Its: Managing Member

By: _____
Name: _____

Title: _____

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

City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attn: City Clerk

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

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

CITY OF FOSTER CITY,
A California Municipal Corporation

and

PILGRIM TRITON PHASE III FC LP,
A Delaware limited liability partnership

PILGRIM-TRITON PHASE C PROJECT

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AFFORDABLE HOUSING REGULATORY AGREEMENT

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Agreement**") is entered into effective as of _____, 201_ ("**Effective Date**") by and between the City of Foster City, a California municipal corporation ("**City**") and Pilgrim Triton Phase III FC LP, a Delaware limited liability partnership ("**Owner**"). City and Owner may be individually referred to herein as a "**Party**," and collectively as the "**Parties**."

RECITALS

A. Owner is the fee owner of that certain approximately __ acre real property in the City of Foster City, California, depicted and referred to in the Pilgrim Triton Master Plan as "Parcel C of Phase B" and "Phase C" (collectively, the "**PTPIII Property**").

B. Concurrently herewith, City and Owner are entering into a Development Agreement with respect to the PTPIII Property dated _____, 2018 (Recorder's Document No. _____) ("**PTPIII Project DA**"), which provides, among other things, for (1) City to grant Owner the vested right to develop approximately seventy (70) market rate, for-sale, residential town home units on an approximately 4.18 acre portion of the PTPIII Property, (2) City to grant Owner the vested right to develop a twenty-two (22) unit affordable multi-family housing rental building ("**Workforce Project**") on that certain approximately .6 acre portion of the PTPIII Property more particularly described in Exhibit 1 attached hereto ("**Property**"); (3) Owner to grant City an option to purchase the Workforce Project on the terms and conditions set forth therein; and (4) for Owner to record a regulatory agreement against the Property to ensure the long-term affordability of the Workforce Project regardless of whether City exercises its option to purchase the Workforce Project.

C. As contemplated by the PTPIII Project DA, Owner and City now desire to enter into this Agreement setting forth the terms under which units in the Workforce Project may be leased, including maximum allowable rents, and imposing certain restrictions on transfer of ownership of the Workforce Project.

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

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

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

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to affordable housing financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision) if applicable.

"Affordable Rent" means the following amounts, less a utility allowance and other fees and charges required to be paid by tenants of the Workforce Project on a non-optional basis: (i) for units that are restricted for rental to "very low income households" as defined in Health and Safety Code section 50053(b)(2), the product of 30 percent times 50 percent of the Area Median Income adjusted for family size appropriate to the unit ("**Very Low Income Units**"); (ii) for units that are restricted for rental to "lower income households" as defined in Health and Safety Code section 50053(b)(3), the product of 30 percent times 80 percent of Area Median Income Adjusted for Family Size Appropriate for the Unit ("**Low Income Units**"); (iii) for units that are restricted to "moderate income households" as defined in Health and Safety Code section 50053(b)(4), the product of 30 percent times 110 percent of the Area Median Income Adjusted for Family Size Appropriate for the Unit for the unit ("**Moderate Income Units**"); and (iv) for units that are restricted for rental to Workforce Households, the product of 30 percent times 130 percent of Area Median Income Adjusted for Family Size Appropriate to the Unit ("**Workforce Units**").

"Area Median Income" or "AMI" means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development ("**HCD**") in Section 6932 of Title 25 of the California Code of Regulations or successor provision.

"City's Authorized Representative" means the City Manager of the City of Foster City or his or her designee.

"Claims" means collectively, liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders, and damages.

"Eligible Household" refers to a Very Low Income Household, a Low Income Household, a Moderate Income Household, or a Workforce Household, as applicable.

"Gross Income" shall have the meaning set forth in Section 6914 of Title 25 of the California Code of Regulations as such section may be revised from time to time.

"HUD" means the U.S. Department of Housing and Urban Development.

"Indemnitees" means collectively, the City and its elected and appointed officers, officials, employees, agents, contractors and representatives.

"Low Income Household" is defined in Section 2.1.

"Management Plan" is defined in Section 6.5.

"Moderate Income Household" is defined in Section 2.1.

"Official Records" means the Official Records of the San Mateo County Recorder.

"PTPIII Project DA" is defined in Recital C.

"Rent Restricted" is defined in Section 2.1.

"Restricted Unit" means a dwelling unit that is reserved for occupancy at an Affordable Rent by Eligible Households of specified household income levels as set forth in Section 2.1.

"Very Low Income Household" is defined in Section 2.1

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that throughout the Term of this Agreement (as defined in Section 4.1 below), the Property shall be used solely for residential occupancy by Eligible Households in compliance with the requirements set forth in this Agreement. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City. Owner further covenants that it shall use best efforts to complete the qualification of Eligible Households and lease up of the Restricted Units as soon as reasonably possible following City's issuance of certificates of occupancy for such units.

2.1 Affordability and Occupancy Requirements. Throughout the Term of this Agreement (as defined in Section 4.1 below): (i) not less than two (2) of the residential units in the Workforce Project shall be both Rent Restricted at the Affordable Rent for Very Low Income Units and occupied (or if vacant, available for occupancy) by Eligible Households whose household Gross Income is no greater than 50 percent (50%) of AMI adjusted for Actual Household Size (**"Very Low Income Household"**); (ii) not less than two (2) of the residential units in the Workforce Project shall be both Rent Restricted at the Affordable Rent for Low Income Units and occupied (or if vacant, available for occupancy) by Eligible Households whose household Gross Income is no greater than 80 percent (80%) of AMI adjusted for Actual Household Size (**"Low Income Household"**); (iii) not less than eight (8) of the residential units in the Workforce Project shall be both Rent Restricted at the Affordable Rent for Moderate Income Units and occupied (or if vacant, available for occupancy) by Eligible Households whose household Gross Income is no greater than 110 percent (110%) of AMI adjusted for Actual Household Size (**"Moderate Income Household"**); and (iv) not less than eight (8) of the residential units in the Workforce Project shall be Rent Restricted at the Affordable Rent for Workforce Units calculated for households whose household Gross Income is no greater than 130 percent (130%) of AMI adjusted for Actual Household Size (**"Workforce Household"**) (collectively, **"Restricted Units"**). The occupancy of the Workforce Units shall not be income restricted. A dwelling unit shall qualify as **"Rent Restricted"** if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category as specified in this Section 2.1.

Notwithstanding any contrary provision of this Agreement, if any residential units in the Workforce Project are subsidized with Section 8 project-based vouchers through a Housing Assistance Payment Contract with HUD, the rules and regulations applicable to such program shall prevail with respect to the setting of rents, implementation of occupancy requirements, and determination of household Gross Income for such units.

2.2 Rents for Restricted Units. For all Restricted Units, rents shall be limited to Affordable Rents for households of the applicable income limit in accordance with Section 2.1. The Restricted Units shall be allocated among affordability categories as set forth in Section 2.1. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Workforce Project because, after admission, such tenant's household income increases to exceed the qualifying limit for such Restricted Unit. Rather a household whose income exceeds the income limit for the income category under which the household initially qualified may continue in occupancy of the unit but shall be treated as the appropriate higher income category based on the actual increased income of the household (e.g. a household that initially qualifies as a Very Low Income Household may graduate to Low Income Household or Moderate Income Household status, as applicable, based on the increased income of the household. . In the event the household Gross Income of a household that qualified at the applicable income limit at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted.

In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in Section 2.1, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Workforce Project to Eligible Household(s) until the required income mix is achieved.

2.3 No Condominium Conversion. Owner shall not convert the residential units in the Workforce Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential units in the Workforce Project during the Term of this Agreement.

2.4 Non-Discrimination; Compliance with Fair Housing Laws.

2.4.1 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or Workforce Project, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, gender identity, disability, marital status, ancestry, age, or national origin of any person. Owner may not use marital status or source of income, including participation in the HUD Section 8 rental voucher program, in determining eligibility. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or Workforce Project or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases, and contracts pertaining to management of the Workforce Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Workforce Project shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b) (1) In leases, the following language shall appear:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision

(d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In contracts pertaining to management of the Workforce Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

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

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

3. Reporting Requirements; Access to Information; Inspections; Annual Monitoring Fee.

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

- (i) The identity of each household member;
- (ii) The total household Gross Income; and
- (iii) The basis upon which each household qualifies as an Eligible Household.

Owner shall retain such certificates for not less than five (5) years, and upon City’s request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Report; Inspections. Following completion of construction of the Workforce Project, by not later than April 1 of each year during the Term of this Agreement, Owner shall submit an annual report (“**Annual Report**”) to the City in form satisfactory to the City, together with a certification that the Workforce Project is in compliance with the affordability restrictions and occupancy requirements of this Agreement. The Annual Report

shall, at a minimum, include the following information for each dwelling unit in the Workforce Project: (i) unit number; (ii) number of bedrooms; (iii) current rent, utility, and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total household Gross Income of residents; (vii) documentation of source of household income; (viii) lease commencement and termination dates; (ix) initial move-in date; and (x) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as the City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by the City.

In addition to the information described above, the Annual Report shall include the following:

- (i) A Workforce Project income and expense statement for the reporting period;
- (ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;
- (iii) A report on the operating reserve and replacement reserve accounts summarizing draws of such funds and remaining balances;
- (iv) A report summarizing any significant repairs or maintenance undertaken for the Workforce Project, and describing any remaining physical defects to be corrected and the budget for such work; and
- (v) A financial audit of the books and records of the Workforce Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant.

City may from time to time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.3 Maintenance of Records.

3.3.1 Owner shall maintain tenant leases, income certifications and other matters related to the leasing of the Workforce Project for a period of five (5) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 With at least 48-hours' notice, during normal business hours, Owner shall provide City and its authorized agents and representatives access to the books, documents, papers and records of the Workforce Project for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With at least 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Workforce Project and the Property and to interview tenants and property managers of the Workforce Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement.

3.5 Monitoring Fee. Owner shall be obligated to pay to City an annual Affordable Housing Monitoring Fee in the amount of \$70 per unit for each residential unit in the Workforce Project that is subject to the affordability restrictions set forth in Section 2.1. This per-unit fee is payable at initial lease-up of each residential unit, upon each annual review, and upon re-occupancy of any residential unit. The City will not charge an annual monitoring fee in the same year that the City charges a fee in connection with the initial lease-up. All monitoring fees shall be payable to City within fifteen (15) days following City's written request for payment, and City shall have the right to file a lien against the Property if such fees are not paid within thirty (30) days of such written request. Beginning in the third year after the City's issuance of a final certificate of occupancy or equivalent for the Workforce Project, the annual compliance monitoring fee will increase annually by the percentage increase in the Consumer Price Index-Urban (CPI-U) for the San Francisco Area, California area over the prior year. In the event that in any year there is insufficient Workforce Project cash flow available to pay the annual monitoring fee, the City will permit the fee to be deferred. Any deferred amounts shall accrue and shall be payable from future Workforce Project cash flow.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the later of (i) ninety ninth (99th) anniversary of the date upon which the City issues a final certificate of occupancy or equivalent for the Workforce Project; and (ii) the end of the useful life of the Workforce Project ("**Term**"). If such date cannot be ascertained, the Term of this Agreement shall end on the one hundred twentieth (120th) anniversary of the Effective Date of this Agreement.

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

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

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Workforce Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Workforce Project, or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Workforce Project (other than the tenants of the individual dwelling units within the Workforce Project) shall be subject to all of the duties and obligations imposed hereby for the full Term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Workforce Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Workforce Project in favor of City.

6. Property Management; Repair and Maintenance; Reserves; Supportive Services.

6.1 Management Responsibilities. Except as otherwise provided in Section 6.6 below with respect to tenant selection, Owner shall be responsible for all management functions with respect to the Property and the Workforce Project, including without limitation the certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Workforce Project.

6.2 Management Entity. City shall have the right to review and approve the qualifications of the management entity proposed by Owner from time to time for the Workforce Project, and shall have the right to review and approve any property management agreement executed between Owner and such entities, which approvals shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby preapproves Mid-Peninsula Housing, Bridge Housing, and HIP Housing Affordable Ventures as being qualified entities to manage the Workforce Project. Any management entity other than a preapproved management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Workforce Project in accordance with this Agreement, City may require Owner to contract with a qualified management agent selected by

City, or to make such other arrangements as City deems necessary to ensure performance of the required functions.

6.3 Repair, Maintenance and Security. Throughout the Term of this Agreement, Owner shall at its own expense, maintain the Property and the Workforce Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Workforce Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Workforce Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Workforce Project and shall make all repairs, renewals and replacements necessary to keep the Property and the Workforce Project located thereon in good condition and repair. Owner shall provide adequate security measures for the Workforce Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction/rehabilitation work and professional services for the Workforce Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Foster City business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute indebtedness, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law. City shall have a lien against the Property for the amount of such unpaid sums, and shall have the right to record a Notice of Claim of Lien against the Property.

6.5 Management Plan; Rental Agreements. Not later than Substantial Completion of the Workforce Project (as defined in Section 3 of the PTPIII Project DA), Owner shall submit for City review and approval, a plan for managing the Property ("**Management Plan**" or "**Plan**"). The Management Plan shall address in detail how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address

how the Owner and the management entity plan to manage and maintain the Property and the Workforce Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Workforce Project tenants. Owner shall abide by the terms of the approved Management Plan in managing and maintaining the Property and the Workforce Project, and throughout the Term of this Agreement, shall submit proposed modifications to City for review and approval.

In addition to the foregoing, the Management Plan shall address the following:

(a) Criteria for determining tenant eligibility, including complying with City's waiting list of prequalified tenants as described in Section 6 below, certification of household income and size, and establishing reasonable occupancy standards (which shall not exceed standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references, and criminal background investigations;

(b) A requirement that eligible applicants be selected based on order of application, lottery or other reasonable method approved by City;

(c) A requirement that eligible applicants be notified of eligibility and be provided an estimate regarding when a unit may be available;

(d) A requirement that ineligible applicants be notified of the reason for their ineligibility;

(e) Specific procedures through which applicants deemed to be ineligible may appeal this determination;

(f) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;

(g) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;

(h) A requirement that a written rental agreement (in form approved by City) be executed with each Eligible Household selected to occupy a unit;

(i) A detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant upon occupancy;

(j) A requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry;

(k) A parking management plan which details, among other things, how parking spaces will be assigned, how guest parking will be handled and how parking will be managed to encourage tenants to use their assigned parking spaces;

- (l) Procedures for maintenance and management of the Workforce Project;
- (m) Procedures for dealing with tenant or neighborhood issues or concerns;
- (n) Procedures for maintaining a reserve account, budgeting for maintenance and repair needs as well as long-term rehabilitation needs, and handling net cash flow; and
- (o) Such other requirements and criteria/procedures as City may reasonably determine appropriate.

6.6 Tenant Selection Use of City List of Prospective Renters. The Owner shall maintain a list of preliminarily pre-qualified households that may be income qualified to rent the Restricted Units. When a Restricted Unit becomes available for rental to a new Eligible Household, Owner agrees to notify the City that a new Restricted Unit is available for rent, and identify what income level (i.e., Very Low Income Household, Low Income Household, Moderate Income Household, or Workforce Household) the available Restricted Unit is designated for. Owner shall maintain a waiting list of potential Eligible Households that incorporates the preference described in Section 6.6(b). The waiting list of potential Eligible Households shall be submitted upon request by the City for City review. Owner shall use the list of potential Eligible Households to fill vacancies in conformance with the City's Below Market Rate Housing Program Administrative Procedures and Guidelines for Property Manager, as amended from time to time, except as modified by this Agreement. If Owner determines that the household is not qualified to rent the Restricted Unit based on income, criminal record, rental history, or other reason that is consistent with state and federal fair housing laws, rules, regulations and guidelines,

(b) Preferences. Subject to Section 6.6(d) below, first preference for the Very Low-, Low- and Moderate-Income Restricted Units shall be offered to Eligible Households that include at least one member who works for the City of Foster. If there are no Eligible Households in the first preference tier, then second preference shall be offered to classroom teachers who are employees of the San Mateo-Foster City School District, the San Mateo Union High School district or the San Mateo Community College District. If there are no Eligible Households in the second preference tier, then third preference shall be offered to persons who live and work in Foster City. If there are no Eligible Households, in the third preference tier, then fourth preference shall be offered to persons who live in Foster City. If there are no Eligible Households in the fourth preference tier, then fifth preference shall be offered to persons who work in Foster City. If there are no Eligible Households in the fifth preference tier, then sixth preference shall be offered to all others who are income qualified.

The Workforce Housing units shall be offered to households that include at least one member who works for the City of Foster City Police Department, City of Foster City Fire Department or is otherwise considered by the City of Foster City to be a first responder to emergencies. If there are no Eligible Households in the first preference tier, then second preference shall be offered to all other employees of the City of Foster City. If there are no Eligible Households in the second preference tier, then third preference shall be offered to classroom teachers who are employees of the San Mateo-Foster City School District, the San Mateo Union High School district or the San Mateo Community College District. If there are no

Eligible Households in the third preference tier, then fourth preference shall be offered to persons who live and work in Foster City. If there are no Eligible Households, in the fourth preference tier, then fifth preference shall be offered to persons who live in Foster City. If there are no Eligible Households in the fifth preference tier, then sixth preference shall be offered to persons who work in Foster City. If there are no Eligible Households in the sixth preference tier, then seventh preference shall be offered to all others who are income qualified.

(c) Income Verification. Prior to entering into a rental agreement with a potential Eligible Household, Owner shall provide a certification to City attesting to the prospective renter's household income and status as an Eligible Household. In connection with such certification, prospective renters shall be required to provide written certification of household income, including without limitation such documents as income tax returns for the previous calendar year, W-2 statements, and pay stubs.

(d) Compliance with Fair Housing Laws. Owner shall comply with all state and federal fair housing laws, rules, regulations and guidelines. Owner may require each prospective Eligible Household to complete an application and credit and background check. There shall be no obligation to rent a Restricted Unit to a prospective renter whose application and credit check does not demonstrate ability to pay rent.

6.7 Approval of Plans and Amendments. If City has not responded to any submission of the Management Plan, the proposed management entity, the proposed management agreement, or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City, provided Owner's request for approval clearly states that City's failure to respond within such 60-day period shall be deemed approval.

6.8 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Workforce Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.9 Insurance Coverage.

(i) Throughout the Term of this Agreement Owner shall maintain insurance at the following minimum levels:

(1) Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage in an amount not less than \$4,000,000 general aggregate and \$2,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

(2) Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation coverage as required by the State of California.

(ii) Endorsements. The insurance policies shall be endorsed as follows:

(1) For the commercial general liability insurance, the Indemnitees shall be named as additional insured, and the policy shall be endorsed with a form at least as broad as ISO form CG 20 10 11 85.

(2) Owner's insurance is primary to any other insurance, self-insurance or joint self-insurance available to the City with respect to any claim arising out of this Agreement. Any insurance, self-insurance or joint self-insurance maintained by the City shall be excess of the Owner's insurance and shall not contribute with it.

(3) Owner's insurance will not be canceled, limited, or allowed to expire without renewal until after 30 days' written notice has been given to the City. During the Term of this Agreement, Owner will not materially alter any of the policies or reduce any of the levels of coverage afforded by its insurance policies.

(iii) Qualifications of Insurers. All insurance companies providing coverage to Owner shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M. Best's rating of not less than "A:VII."

(iv) Adjustments. The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in inflation and the litigation climate in California. Within thirty (30) days following City's delivery of written notice of any such adjustments, Owner shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

(v) Additional Insured Coverage; Liability Limits. For all liability insurance required by this Agreement, Owner shall obtain endorsements that name the Indemnitees as additional insured in the full amount of all applicable policies, notwithstanding any lesser minimum limits specified in this Agreement. This Agreement requires Owner to obtain and provide for the benefit of the Indemnitees, additional insured coverage in the same amount of insurance carried by Owner, but in no event less than the minimum amounts specified in this Agreement. In the event that Owner obtains insurance policies that provide liability coverage in excess of the amounts specified in this Agreement, the actual limits provided by such policies shall be deemed to be the amounts required under this Agreement. Without limiting the foregoing, the limits of liability coverage specified in this Agreement are not intended, nor shall

they operate, to limit City's ability to recover amounts in excess of the minimum amounts specified in this Agreement.

6.10 Property Damage or Destruction. If any part of the Workforce Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.

6.11 Reserves. Owner shall establish and maintain operating and replacement reserves in the amounts as appropriate to ensure the Workforce Project is maintained at all time in decent, safe, sanitary, habitable and tenantable living conditions and in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. City's advance written consent shall be required for withdrawals from reserves for non-routine expenses exceeding the sum of \$10,000 in any 12 month period.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records. Deeds of trust provided for the benefit of lenders shall be subordinate to this Agreement and upon City request such lenders shall execute and deliver to City a subordination agreement in a form reasonably acceptable to the City.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the Term of this Agreement, except as permitted by this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property or the Workforce Project without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the Term of this Agreement, except as expressly permitted by this Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

8.2 Permitted Transfers. The prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the PTPIII Project DA; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; or (iv) subject to the City's prior written approval, assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Workforce Project or the Property or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Workforce Project or part thereof if all of the following requirements are met:

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently manage the Workforce Project and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Workforce Project, or this Agreement together with such documentation of the proposed transferee's qualifications and management capacity as the City may reasonably request.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Workforce Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Workforce Project, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in Section 8.2.

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

8.6 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Workforce Project or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; and (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon

all or any portion of the Workforce Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser; provided however, that such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Workforce Project or the Property that such violation has occurred.

9. Default and Remedies.

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

- (i) The occurrence of a Transfer in violation of Section 8 hereof;
- (ii) Owner's failure to maintain insurance on the Property and the Workforce Project as provided by Section 6.9 above, and the failure of Owner to cure such default within five (5) days;
- (iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Workforce Project or failure to pay any other charge that may result in a lien on the Property or the Workforce Project, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;
- (iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;
- (v) A default arises under the PTPIII Project DA that remains uncured beyond the expiration of any applicable cure period; or
- (vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default to completion with due diligence and in good faith but in no event longer than ninety (90) days from receipt of the notice of default.

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

(i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(ii) For violations of obligations with respect to rents for Restricted Units, impose a charge in an amount equal to the actual amount collected in excess of the Affordable Rent; or

(iii) Pursue any other remedy allowed under the law or in equity.

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

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City), and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's management, or operation of the Property and the Workforce Project, or Owner's employees', agents', contractors', or subcontractors' failure to comply with applicable law, including without limitation state and federal fair housing laws, or failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify City and the other Indemnitees, including without limitation, Section 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of the PTPIII Project DA; (ii) any extensions of time for performance required by any City Document; (iii) any provision in the PTPIII Project DA limiting the personal liability of Owner, or any other party under the PTPIII Project DA; (iv) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under the PTPIII Project DA, (v) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under the PTPIII Project DA; and (vi) the release or substitution in whole or in part of any security.

(c) The obligations of Owner to indemnify the Indemnitees shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust or this Agreement.

11. Residential Use; No Condominium Conversion. The Property and the Restricted Units shall be used only for residential purposes, and the Restricted Units shall be operated and maintained as residences for the Term of this Agreement. No part of the Property shall be operated as transient housing in which the term of occupancy is less than thirty (30) days. Owner shall not convert the Property to condominium or cooperative ownership or sell condominium or cooperative rights to the Property or any part thereof during the Term of this Agreement.

12. Miscellaneous.

12.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties and recorded in the Official Records.

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

12.3 Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Owner as follows:

If to the City: Community Development Director
City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: Curtis Banks
Telephone: (650) 286-3225

With Copy to: City Attorney
City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: Curtis Banks
Telephone: (650) _____

If to Owner: Pilgrim Triton Phase III FC LP
c/o Sares Regis

901 Mariners Island Boulevard, Suite 700
San Mateo, CA 94404
Attn: Mark Kroll
Telephone : (____) _____

Notices to be deemed effective if delivered by certified mail return receipt requested, or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Party.

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

12.5 Parties Not Co-Venturers; Independent Contractor; No City Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Workforce Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

12.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

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

12.8 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Foster City shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

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

12.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

12.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

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

12.13 Entire Agreement; Exhibits. This Agreement, together with the PTPIII Project DA, contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibit 1 attached hereto is incorporated herein by this reference.

12.14 Survival. Owner's obligations pursuant to Section 10, and all other provisions that expressly so state, shall survive the expiration or termination of this Agreement.

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

12.17 City's Acquisition of Fee Title. In the event City acquires fee title to the Workforce Project, City may, in its sole discretion by written instrument, terminate, amend or modify this Agreement from time to time as it sees fit.

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

SIGNATURES ON FOLLOWING PAGE(S).

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

CITY:

CITY OF FOSTER CITY, a California
municipal corporation

By: _____
Jeff Moneda, City Manager
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Jean B. Savaree, City Attorney

ATTEST:

By: _____
Priscilla Tam, City Clerk

OWNER:

PILGRIM-TRITON PHASE III FC LP,
a Delaware limited partnership

By: RHBA Pilgrim Triton PTPIII FC, LLC, a
Delaware limited liability company

Its: Sole Member

By: Regis Homes Bay Area, LLC, a
Delaware limited liability company

Its: Managing Member

By: _____

Name: _____

Title: _____

[signature must be notarized]

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

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

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

On _____, before me, _____
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

(Notary Signature)

Exhibit 1

LEGAL DESCRIPTION THE PROPERTY