

TERM SHEET

1. Background. Pilgrim Triton Phase III FC LP, a Delaware limited liability partnership (“**Developer**”) owns approximately 3.66 acres (“**Phase C Property**”) and is in the process of acquiring fee title to the approximately 1.2 acre property that is directly adjacent (“**Phase B Commercial Property**”) within the City of Foster City, County of San Mateo, State of California (collectively, the “**Property**”), as depicted on Attachment A. The Property comprises the last remaining undeveloped portion of the approximately 20.75 acre Pilgrim Triton Master Plan (“**Master Plan**”) area and is subject to that certain Master Development Agreement effective February 11, 2010 (Recorder’s Document No. 2010-017940), as amended (the “**Master Development Agreement**”). Developer has proposed amending the Master Development Agreement and Master Plan to facilitate redevelopment of the Property with up to 70 for sale, market rate residential units (including the 17 that are currently entitled on the Phase C Property) (“**Market Units**”) and 22 affordable workforce housing units (“**Workforce Units**”) in a stand-alone surfaced parked building on a separate parcel (“**Workforce Land**”), in lieu of the 172,943 square feet of commercial uses currently entitled on the Phase C Property and the 58,000 square feet of commercial uses currently entitled on the Phase B Commercial Property, in exchange for Developer’s commitment to (a) develop the Workforce Units on the Workforce Land partly at Developer’s expense (with the balance of such costs to be borne by City), and (b) upon satisfactory completion of the Workforce Units, to convey the Workforce Units and Workforce Land to City to both satisfy Developer’s affordable housing obligations with respect to the Development and provide an important community benefit to the City. The Market Units and Workforce Units are collectively referred to herein as the “**Development**.” The approximately boundaries of the Workforce Land are depicted in Attachment A.

2. Purpose. The purpose of this Term Sheet is to set forth the major business terms upon which the City, subject to City Council approval, would be willing to amend the Master Development Agreement and enter into one or more ancillary agreements with Developer with respect to the Development (collectively, the “**DA Amendments**”) to accomplish the objectives described in paragraph 1 above.

3. Entitlement Risk/Costs. Developer will bear all costs to be incurred in connection with amendment of the Master Plan and re-entitlement of the Property as contemplated herein. Developer will pay City’s out-of-pocket legal and consultant costs incurred in connection with the negotiation and drafting of the DA Amendments, including the costs of Keyser Marston & Associates and Burke, Williams & Sorensen LLP, subject to a mutually agreed upon budget, including process for approving budget augmentations.

4. Preliminary Design Plans for Workforce Units. Prior to consideration of the DA Amendments for approval, City and Developer will mutually agree on preliminary plans, drawings and specifications, which will include, among other details, conceptual site plan, massing diagram (height and configuration), tabulations of areas and uses for the Workforce Units and the specific boundaries of the property to be conveyed to the City (“**Preliminary Design Plans**”).

5. Estimated Budget for Workforce Units. City and Developer, with input from Keyser Marston & Associates, are reviewing and developing an estimated budget estimate of the

total probable hard and soft costs of designing and constructing the Workforce Units, including a reasonable internal Developer project administration fee and a construction management fee of hard and soft costs, contingency and assuming prevailing wages as provided below (“**Estimated Budget**”). Prior to the approval of the DA Amendments, the City and Developer will have agreed on an Estimated Budget.

6. Refinement of Preliminary Design Plans and Budget for Workforce Units. In order to ensure that the design and construction cost of the Workforce Units is financially feasible and ensure regular communication, the DA Amendments will provide a clear process and establish timing in a schedule of performance, subject to mutually acceptable extensions and no fault (force majeure) events (“**Schedule of Performance**”), for the City and Developer to engage in an iterative design (preliminary designs through schematics, design development and construction level documents) which would result in an agreed upon final design and budget for the Workforce Units, including reasonable internal Developer project administration fee and a construction management fee of hard and soft costs, and contingency. The DA Amendments would also provide clear terms related to changes to the design and budget, and remedies for the City and Developer to minimize risks, including but not limited to minimizing risk to the City of unanticipated cost overruns, create appropriate incentives and disincentives between the parties and ensure the project can obtain financing at commercially reasonable terms. The DA Amendments will also provide an clear process and timing in the Schedule of Performance for the Developer and City to engage in regular communication throughout the construction of the Workforce Units regarding the actual design and construction costs for the Workforce Units resulting in a final accounting of the actual total costs of the Workforce Units prior to dedication and conveyance of the Workforce Units and Workforce Land.

7. Funding of Workforce Units Construction. The DA Amendments will provide that the Developer will advance all funds required for the design and construction of the Workforce Units as reflected on the final approved design and budget. Following satisfactory completion of the project, City will reimburse Developer the difference of the total costs of designing and constructing the Workforce Units less \$3 Million, which represents Developer’s agreed upon contribution to the cost of the project. Any cost overruns incurred in connection with the design and construction of the Workforce Units (other than change order requests initiated by City which will be paid by City) over and above the line item amounts set forth in the final approved budget, including contingencies, will be paid 50% by Developer and 50% by City. The City’s reimbursement (including the City’s share of cost overruns, if any) would be reimbursed by City to Developer concurrently with City’s acceptance of the Workforce Units.

8. Workforce Units Schedule of Performance. The Schedule of Performance would include timing for commencement and completion of the Workforce Housing, with the goal of delivering the Workforce Units prior to or concurrently with the Market Units. The Schedule of Performance will provide that the Developer, or its pre-approved assignee, will obtain a building permit for the Workforce Units and commence construction thereof prior to or concurrently with commencement of construction on the Market Units and substantially complete the Workforce Units (including all related land improvements) and transfer the Workforce Land to the City at substantially the same time as issuance of a certificate of occupancy for the Market Rate Units. The DA Amendments will also provide that that Developer will have no obligation to irrevocably dedicate the Workforce Land or construct the Workforce Units until a building

permit has been issued for the Market Units. The DA Amendments will include mutually acceptable definition for “substantial completion” and remedies for the City and Developer to minimize risk, including limiting the risk to the City that the Market Units would be built without the Workforce Units, create appropriate incentives and disincentives between the parties and ensure the project can obtain financing at commercially reasonable terms.

9. Selection of Consultants and Contractors and Award of Construction Contract. The DA Amendment will include qualification terms, process and timing in the Schedule of Performance for the Developer to identify and select the architects and consultants, as well as the bid process and approval of the construction contract related to the Workforce Units, each which will be subject to reasonable approval by the City Manager. The DA Amendments will include terms to ensure that the contract for the construction of the Workforce Units will be awarded to the contractor providing the best value for the construction as reasonably determined by Developer in consultation with City.

10. Prevailing Wage Requirement. Notwithstanding the fact that the Workforce Units are a private work, Developer will acknowledge and agree that the work performed on the Workforce Units will be subject to prevailing wage rates as determined pursuant to Labor Code Section 1720, et seq. (“**Prevailing Wage Law**”). Accordingly, Developer will comply with, and will cause its contractor to comply with, all applicable Prevailing Wage Law requirements, including provisions requiring the payment of prevailing wages in connection with construction of the Workforce Units. Developer will require its general contractor to post at the project site prevailing wage rates for all applicable trades and to submit copies of certified payroll records as required under the Prevailing Wage Law. Developer will also include in its general contractor construction contract a provision obligating the general contractor to require its subcontractors of each tier to comply with all applicable Prevailing Wage Law requirements. The DA Amendments will include indemnity and waivers and releases in favor of City with respect to Developer’s obligations to comply with Prevailing Wage Law requirements.

11. City Inspection Rights. The DA Amendments will include terms that provide for the City to inspect the work and materials, and manufacture and preparation of materials, from beginning of construction until final completion and acceptance of the Workforce Units, and to require that the Developer will have an absolute duty, in the absence of written agreement between the parties to the contrary, to perform work in conformance with the approved design, and to correct defective or non-conforming work immediately upon Developer’s knowledge.

12. Improvement Security. The DA Amendments will include terms that require the Developer shall furnish and maintain faithful performance, labor and material, and warranty security for the Workforce Units at times to be established in the Schedule of Performance. The Developer will also be required to furnish warranty security prior to the City’s acceptance of the Workforce Units. The form of the security shall be as authorized by the Subdivision Map Act (including Government Code Sections 66499, et seq.) and the City of Foster City Municipal Code.

13. Warranty Period. The DA Amendments shall provide a reasonable warranty period for the Workforce Units following City’s acceptance of the Workforce Parcel and the Workforce

Units for the Developer to correct of any failure of or defect in design, materials or workmanship and other standard related terms.

14. City as Third Party Beneficiary. The DA Amendments will provide that the City will be an intended third party beneficiary of the rights of Developer with respect to agreements entered into by the Developer with design, engineering, construction, or other professionals for the purposes of performing the work of design and construction of the Workforce Units ("**Design and Construction Agreements**"), and require that Developer include a provision in all Design and Construction Agreements granting to the City the right of assignment in the event of a Developer uncured default under the DA Amendments.

15. Permits, Licenses, and Compliance with Law. The DA Amendments will require that the Developer will obtain and maintain all necessary land use entitlements, permits and licenses for the design, construction and development of the Workforce Units under all applicable law.

16. Developer's Investigation of Workforce Land. The DA Amendments will provide that, prior to dedication and conveyance of the Workforce Land to the City, Developer will make such investigations of the Workforce Land as Developer deems necessary to confirm the absence of hazardous materials on, under or about the Workforce Land, including within the soil and ground water. If Developer discovers any hazardous materials on, under or about the Workforce Land requiring remediation, then Developer will notify City of such fact in writing. Developer will, at its sole expense, remediate the hazardous materials and obtain the issuance of closure letters for the intended use without any requirement of further remedial work from all governmental agencies which have asserted jurisdiction over the remediation of the Workforce Land and provide copies of such closure letters to City. The remedial work will be performed in accordance with all applicable governmental requirements and the costs thereof will be paid by Developer and will not be included in the final budget.

17. Title Insurance. The DA Amendments will provide that, upon the satisfactory completion of the Workforce Units, the Developer will convey to City, at no cost to City, fee simple title to the Workforce Units and Workforce Land as evidenced by an ALTA title insurance policy issued by a title insurance company acceptable to City.

18. Indemnity. The DA Amendments will obligate the Developer to indemnify, defend and hold harmless City and City Parties from and against any claims, liabilities, damages, including attorneys' fees and costs, relating to the approval or implementation of the DA Amendments or construction of the proposed Development.

19. Brokers. Neither Developer nor the City would be represented by a real estate broker relating to the proposed Workforce Units transaction. Consequently, except as provided above, there would be no real estate commission due as a result of the proposed transaction.

20. Prorations/Closing Costs. As City is a tax exempt public agency, current taxes and assessments would not be prorated. All closing costs and recording fees and construction escrow fees would be paid by Developer

21. Satisfaction of Affordable Housing and Commercial/Retail Obligations. The DA Amendments would provide that Workforce Units will completely satisfy the affordable housing requirements under the Master Development Agreement for the Market Units. No retail or other commercial uses will be required in the Development. The Developer and City acknowledge the removal of the commercial uses on the Property may potentially affect the existing retail uses within the Master Plan and will continue good faith discussions with such users.

22. Planning and CEQA Review. In conjunction with City permits and approvals and City consideration of the DA Amendments, it will be necessary to undertake environmental review of the Development pursuant to CEQA. The Master Development Agreement and Master Plan were studied in an Environmental Impact Report ("**Existing EIR**") and the parties contemplate that City will compare the Development to what was studied in the Existing EIR. Developer will pay all costs charged by City in conjunction with the applications for City permits and approvals, including all costs associated with supplemental or other additional environmental review and, if necessary, preparation of such additional CEQA documents and analysis. The parties acknowledge that the City retains the absolute sole discretion to (i) modify the project as may, in its sole discretion, be necessary to comply with CEQA and modifications that are necessary to mitigate impacts of the Project, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, (iv) determine not to proceed with the project, or (v) modify the project for consistency with adopted City plans. No legal obligations will exist unless and until the parties have negotiated, executed and delivered a mutually acceptable DA Amendments based upon information produced from the environmental review process and other public review and hearing processes, and the project has received all applicable governmental approvals. Any agreements resulting from negotiations will become effective only if and after each agreement has been considered and approved by the City following conduct of all legally required procedures.

23. Confidentiality of Information. While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, Developer will acknowledge that City needs sufficient, detailed information about the proposed Development to make informed decisions about the content and approval of the DA Amendments. City will work with Developer to maintain the confidentiality of proprietary information subject to the requirements imposed on City by the Public Records Act (Government Code Section 6253 et seq.). Developer acknowledges that City may share information provided by Developer of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise City concerning matters related to the proposed Development and to City Council members as part of the negotiation and decision making process. If the parties fail to enter into DA Amendments by the outside date specified below, City will return to Developer any confidential information submitted by Developer. If any litigation is filed seeking to make public any information Developer submitted to City in confidence, City and Developer will cooperate in defending the litigation. Developer will pay City's reasonable costs of defending such litigation and will indemnify City against all costs and attorneys' fees awarded to the plaintiff in any such litigation.

24. DA Amendments. This term sheet is intended to be a precursor to one or more binding DA Amendments. City and Developer will negotiate in good faith to execute comprehensive and definitive DA Amendments incorporating the terms and conditions of this term sheet with a goal of bringing the DA Amendments for approval by City Council by June 30, 2018, subject to all applicable legal process and requirements.

25. Term Sheet Limitations. These are the major business terms upon which City, subject to approval of its Council, is prepared to enter into DA Amendments with you regarding the Development described above. Except as expressly provided in paragraph 23 above, this term sheet is not intended to be legally binding, and neither City nor Developer will be legally bound unless and until formal legal documents are signed in the future. If we have not signed formal documents for any reason by December 31, 2018, however, neither party will have any further obligation to proceed in good faith with these negotiations.

CITY:

CITY OF FOSTER CITY, a California
municipal corporation

By: Charlie Bronitsky
Charlie Bronitsky, Mayor

Attest: Doris L. Palmer
Doris L. Palmer, City Clerk

DEVELOPER:

PILGRIM TRITON PHASE III FC LP,
a Delaware limited partnership

By: Pilgrim Triton PTPIII FC, LLC,
a Delaware limited liability company
Its: General Partner

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: Todd A. Regonini

Title: Authorized Representative

APPROVED AS TO FORM:

By: Jean B. Savaree
Jean B. Savaree, City Attorney

ATTACHMENT A

DIAGRAM OF PROPERTY (INCLUDING WORKFORCE LAND)

To be inserted

Pilgrim Triton Proposed Amendment to Master Plan Land Use Diagram

