RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code

Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

FOR PROPERTY AT 5th and BRANNAN STREETS

Block 3778: Lots 1B, 2B, 4, 5, 47 and 48

TABLE OF CONTENTS

EXHIBITS AND SCHEDULES

Exhibits

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this ____ day of _____, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and KR FLOWER MART LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer owns and operates the approximately 295,144 square foot site along Brannan Street between 5th and 6th Streets, on Assessor's Block 3778, Lots 001B, 002B, 004, 005, 047 and 048, composed of the 141,992 square feet of flower market, approximately 4,900 square feet of existing retail uses, 45,549 square feet of vacant PDR space, and surface parking lots, as more particularly described on Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed use development that will include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing approximately: 2,032,165 square feet of office space; 89,459 square feet of retail space; 115,000 rentable square feet of vendor space (including accessory retail space) for a new wholesale

flower market; 30 loading spaces; and 769 parking spaces; all as more particularly described in Exhibit B.1 (the "**Project**") and shown in Exhibit C.1. The exact numbers, design, location and massing listed above may change, in keeping with Planning Department standard practices consistent with the Planning Code.

C. In order to satisfy the tenants' request to have an Permanent Off-Site Option (per Article 3), the Developer is also seeking entitlements for a revised project that replaces the on-site new wholesale flower market with approximately 113,036 square feet of other uses at the Project Site, consisting of a development with approximately: 2,061,380 square feet of office space; 90,976 square feet of retail space; 22,690 square feet of childcare use, including outdoor activity area; 9 loading spaces; and 632 vehicle parking spaces, all as more particularly described in Exhibit B.2 and shown in Exhibit C.2 (the **"Project Variant**"). All references in this Agreement to the "**Project**" shall mean (1) before selection under Article 3, both the Project and the Project Variant, and (2) following selection under Article 3, either the Project or the Project Variant, whichever is selected.

D. As part of the Project, Developer will relocate the existing flower market tenants to an interim facility constructed by Developer at the Temporary Relocation Site before Commencing Construction of the Project. Upon completion of the Project, Developer shall pay to move the flower market tenants back to the Project Site under the Project or to the Permanent Off-Site Facility under the Project Variant, as applicable. Alternatively, in the event the Permanent Off-Site Option is exercised, Developer may skip the Temporary Relocation Site and move the flower market vendors straight to the Permanent Off-Site Facility if the Permanent Off-Site Facility has been completed by the time Developer initially moves the flower market vendors from the Project Site. These commitments by Developer, together with certain rent

schedule commitments for a period of at least 34.5 years, are also made in a tri-party agreement among Developer, Tenant Association, and SFFM, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**").

E. The Project is anticipated to generate an annual average of approximately 8,050 construction jobs during construction and, on completion, an approximately $29.9 million annual increase in general fund revenues to the City and approximately $9.3 million annual increase in non-general fund revenues to the City.

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56. The Parties acknowledge that this Agreement is entered into in consideration of their respective burdens and benefits, including the representations and warranties, in this Agreement. The Parties also acknowledge that this Agreement is entered into to encourage and maintain effective land use planning.

G. As a result of the development of the Project in accordance with this Agreement, the City has determined that additional benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These

additional benefits are essential elements for this Agreement and include development of a new permanent home for the flower market, with subsidized rents, the dedication of a housing parcel, onsite childcare, workforce commitments and certain public improvements as described herein.

H. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), "**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project. Pursuant to Government Code Section 65867.5, this Agreement is a legislative act that is approved in an ordinance by the Board of Supervisors.

I. The Project Site is located in the recently adopted Central SOMA Plan area, which was approved by the Board of Supervisors on November 27, 2018 and December 4, 2018, pursuant to Ordinance Nos. 282-18, 296-18 and 280-18, Board of Supervisors File Nos. 180490, 180184, and 180185, respectively, which among other actions rezoned the Project Site for the CMUO (Central SOMA Mixed-Use Office) and MUR (Mixed Use Residential) zoning districts, and the 270-CS and 160-CS height and bulk districts.

J. The City analyzed the environmental impacts of the development density associated with the Project in the Central SOMA Plan Final Environmental Impact Report (**"Central SOMA FEIR"**), certified by the Planning Commission in Motion No. 20182, on May

10, 2018. Potential development at 2000 Marin Street, as the Temporary Relocation Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report (**"Bayview FEIR**"), which was certified by the San Francisco Redevelopment Agency on March 2, 2006. On July 3, 2019, the Environmental Review Officer (**"ERO"**) issued a Community Plan Exemption ("**CPE**") and Addendum for the Project and the Temporary Relocation Site at 2000 Marin Street, including the mitigation monitoring and reporting program (**"MMRP"**). The CPE were prepared in accordance with CEQA and issued by the Planning Department in Case Nos. 2015-004256ENV. Copies of the Certificate of Determination are on file with the Board of Supervisors in File Nos. 190682 and 190681, and are incorporated herein by reference.

K. On July 18, 2019, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission granted Approvals for the Project and adopted the MMRP, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). The information in the Central SOMA FEIR, Bayview FEIR, and CPE were considered by the City in connection with approval of this Agreement.

L. On _____, 2019, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made

the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2019, the Board adopted Ordinance Nos. [_____] approving this Agreement (File No. 190682) and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2020.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 **"Addendum"** has the meaning set forth in Recital J.

1.2 "**Administrative Code**" means the San Francisco Administrative Code.

1.3 "**Affiliate" or "Affiliates**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "**control**" means the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.4 "**Agreement**" means this Development Agreement, including the Recitals and Exhibits.

1.5 "**Alternative Permanent Site**" means a Viable site, in lieu of the Project Site, for the location of the Permanent Off-Site Facility, pursuant to Section 3 to this Agreement, in the event the Permanent Off-Site Option is exercised.

1.6 "**Alternative Option Period**" has the meaning set forth in Section 3.5.

1.7 "**Annual Review Date**" has the meaning set forth in Section 9.1.

1.8 "**Applicable Laws**" has the meaning set forth in Section 6.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.9 "**Approvals**" means the City approvals and entitlements listed on Exhibit K.

1.10 "**Assignment and Assumption Agreement**" has the meaning set forth in Section 13.2.

1.11 "**As Is Relocation Option**" has the meaning set forth in Section 3.8.1(b).

1.12 "**Associated Community Benefits**" is defined in Section 5.1.

1.13 **"Bayview FEIR"** shall have the meaning set forth in Recital J.

1.14 "**Board of Supervisors**" or "**Board**" means the Board of Supervisors of the City and County of San Francisco.

1.15 "**Building**" means the Market Hall Building, the Blocks Building, or the Gateway Building (or collectively, the "**Buildings**"), as generally described in Exhibit B.

1.16 **"Central SOMA FEIR"** shall have the meaning set forth in Recital J.

1.17 "**Central SOMA Plan**" shall have the meaning set forth in Recital I.

1.18 "**CEQA**" has the meaning set forth in Recital H.

1.19 "**CEQA Findings**" means the CEQA findings made by the Planning Commission and the Board of Supervisors in approving this Agreement.

1.20 "**CEQA Guidelines**" has the meaning set forth in Recital H.

1.21 "**CFD**" means a community facilities district formed over all of the Project Site that is established under the CFD Act in accordance with the Central SOMA Plan.

1.22 "**CFD Act**" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Act, as amended from time to time.

1.23 "**Chapter 56**" has the meaning set forth in Recital F.

1.24 "**City**" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.25 "**City Agency**" or "**City Agencies**" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFFD, SFMTA, SFPUC, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction or discretion of a City department that has not approved or consented to this Agreement in connection with the issuance or denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. The City actions and proceedings

subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

1.26 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

1.27 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including without limitation reasonable attorneys' fees and costs and third party costs relating to the Project, the Temporary Relocation Facility, and the Permanent Off-Site Facility, but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 10.6 when Developer is the prevailing party.

1.28 "**City Parties**" has the meaning set forth in Section 5.6.

1.29 "**City Report**" has the meaning set forth in Section 9.2.2.

1.30 "**City-Wide**" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.31 "**CMA**" is defined in Section 13.1.

1.32 "**Commence Construction**" means the commencement of physical construction of the applicable Building foundation on the Project Site.

1.33 "**Community Benefits**" has the meaning set forth in Section 5.1.

1.34 "**Community Benefits Program**" has the meaning set forth in Section 5.1.

1.35 "**CPE**" has the meaning set forth in Recital J.

1.36 "**Declaration of Restrictions**" has the meaning set forth in Section 3.11.

1.37 **"Default**" has the meaning set forth in Section 10.3.

1.38 "**Design Guidelines**" means the Key Development Site Guidelines adopted as part of the Central SOMA Plan.

1.39 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

1.40 "**Development Agreement Statute**" has the meaning set forth in Recital F, as in effect as of the Effective Date.

1.41 "**DPW**" means the San Francisco Department of Public Works.

1.42 "**Effective Date**" has the meaning set forth in Section 2.1.

1.43 "**Enacting Ordinance**" has the meaning set forth in Recital M.

1.44 "**Excusable Delay**" has the meaning set forth in Section 12.5.2.

1.45 "**Exercise Notice**" has the meaning set forth in Section 3.4.

1.46 **"Existing Flower Market"** means the improvements existing on the Project Site as of Effective Date, excluding the Zappettini Parcel.

1.47 "**Existing Standards**" has the meaning set forth in Section 6.2.

1.48 "**Existing Subtenant**" means each of those existing flower mart tenants who has a sublease for space at the Existing Flower Market as of the Relocation Date. Only Existing Subtenants in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent

Off-Site Facility under the Permanent Off-Site Option.

1.49 "**Existing Uses**" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date.

1.50 "**Extended Alternative Option Period**" has the meaning set forth in Section 3.4.

1.51 "**Federal or State Law Exception**" has the meaning set forth in Section 6.10.1.

1.52 "**Flower Market Obligations**" means Developer's obligations described in Article 3 and in subsection 5.1.1.

1.53 "**Foreclosed Property**" is defined in Section 11.5.

1.54 "**General Plan Consistency Findings**" has the meaning set forth in Recital K.

1.55 "**Gross Floor Area**" has the meaning set forth in Planning Code Section 102 as of the Effective Date.

1.56 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, including offsets for any applicable fee credits, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to the Transportation Sustainability Fee (per Planning Code Section 411A), the Jobs-Housing Linkage Fee (per Planning Code Section 413), Child Care Fee (per Planning Code Section 414), Art Fee (per Planning Code Section 429), School Impact Fee (California Education Code Section 17620), Eastern Neighborhoods Infrastructure Impact Fee (per Planning Code Section 423), or fees,

dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees (including CFD special taxes due under the Central SOMA Plan), SFPUC Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws. A sample calculation of the applicable Impact Fees and Exactions is included in Exhibit P.

1.57 "**Interim Lease**" means a lease entered into by Developer, as tenant, and the owner of the Temporary Relocation Site, for the temporary flower market, consistent with the requirements of the Tri-Party Agreement and this Agreement.

1.58 "**JHL Fee Credit**" has the meaning set forth in Section 6.9.1(a).

1.59 "**Later Approval**" means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, design review approvals, improvement agreements, use permits, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, street space permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.60 "**Law(s)**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" shall refer to any or all Laws as the context may require.

1.61 "**Law Adverse to City**" is defined in Section 6.10.4.

1.62 "**Law Adverse to Developer**" is defined in Section 6.10.4.

1.63 "**Litigation Extension**" has the meaning set forth in Section 12.5.1.

1.64 "**Losses**" has the meaning set forth in Section 5.6.

1.65 "**Master Tenant**" means the direct tenant or subtenant of Developer at any of the Existing Flower Market, the Temporary Relocation Facility, the Permanent Off-Site Facility, or the New Wholesale Flower Market, as applicable.

1.66 "**Material Change**" means any modification that would materially alter the rights, benefits or obligations of the City or Developer under this Agreement that is not consistent with the Central SOMA Plan or that (i) extends the Term, (ii) changes the permitted uses of the Project Site, (iii) decreases the Community Benefits, (iv) increases the maximum height, density, or bulk by more than ten percent (10%) the size of the Project (as considered in its entirety and not with respect to any individual Building but as consistent with the Approvals) or changes the parking ratios (other than as permitted under the Central SOMA Plan), or (vi) reduces the applicable rate for the Impact Fees and Exactions.

1.67 "**Mitigation Measures**" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.

1.68 "**MMRP**" means that certain mitigation monitoring and reporting program attached hereto as Exhibit L.

1.69 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site or the Alternative Permanent Site to secure an obligation made by the property owner or holder of a leasehold interest.

1.70 "**Mortgagee**" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.71 "**Municipal Code**" means the San Francisco Municipal Code.

1.72 "**New City Laws**" has the meaning set forth in Section 6.7.

1.73 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market (including 10,000 square feet of accessory retail) to be constructed on the Project Site as part of the Project, as more particularly described in the project description in Exhibit B.1.

1.74 "**Non-City Agency**" means Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement.

1.75 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.76 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.77 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee.

1.78 **"Permanent Off-Site Approvals"** means the Permanent Off-Site Building Approvals and the Permanent Off-Site Entitlement Approvals.

1.79 "**Permanent Off-Site Building Approvals**" means the first site permit or first building permit issued by the City or any City Agency, other than the Approvals, for the Alternative Permanent Site and/or the Permanent Off-Site Facility.

1.80 **"Permanent Off-Site Entitlement Approvals"** means any land use approval or entitlement issued by the City or any City Agency, other than the Approvals, that are necessary for the use of the Permanent Off-Site Facility and the Alternative Permanent Site as a wholesale flower market with ancillary retail uses, including without limitation Planning Commission and/or Planning Department entitlements, Planning Code amendments, and completion of CEQA review.

1.81 "**Permanent Off-Site Facility**" means a permanent flower market facility to be constructed at the Alternative Permanent Site, in lieu of the New Wholesale Flower Market at the Project Site, pursuant to Section 3 and Exhibit F-1 to this Agreement, in the event the Permanent Off-Site Option is exercised, as more particularly set forth in Section 3.7.

1.82 "**Permanent Off-Site Master Lease**" means a lease for the Alternative Permanent Site entered into by Developer, as the landlord, and Master Tenant, as the tenant, for a term of at least 34.5 years and less than 35 years, as approved by the City, after the relocation of the Vendors.

1.83 "**Permanent Off-Site Notice**" has the meaning set forth in Section 3.3.

1.84 "**Permanent Off-Site Option**" means an option whereby in lieu of a New Wholesale Flower Market at the Project Site, a Permanent Off-Site Facility is constructed at the Alternative Permanent Site and leased pursuant to the Permanent Off-Site Master Lease.

1.85 "**Phase**" means either Phase 1(a), Phase 1(b) or Phase 1(c), as applicable.

1.86 "**Phase 1(a)**" means the issuance of a certificate of occupancy and/or final completion for the Blocks Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H. If the Stay Option is exercised, Phase 1(a) will not be deemed complete until all Post-Development Subtenants who have entered into a Post-Development Sublease have been relocated back to the Project as part of Developer's relocation program in accordance with the Tri-Party Agreement.

1.87 "**Phase 1(b)**" means the issuance of a certificate of occupancy and/or final completion for the Market Hall Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.88 "**Phase 1(c)**" means the issuance of a certificate of occupancy and/or final completion for the Gateway Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.89 "**Planning Code**" means the San Francisco Planning Code.

1.90 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.91 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

1.92 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.

1.93 **"Post-Development Subtenant"** means each of those Existing Subtenants and Pre-Development Subtenants who pursuant to the terms of the Tri-Party Agreement enter into

a Post-Development Sublease with the owner or master lessor thereof at the New Wholesale Flower Market.

1.94 **"Post-Development Sublease"** means a lease agreement at the New Wholesale Flower Market between Developer or the master lessor of the New Wholesale Flower Market and each Post-Development Subtenant.

1.95 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who, in accordance with the terms of the Tri-Party Agreement (and the Pre-Development Lease defined therein), entered into a Pre-Development Sublease for space at the Existing Flower Market or the Temporary Relocation Site, as applicable. Only Pre-Development Subtenants that remain in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent Off-Site Facility under the Permanent Off-Site Option.

1.96 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.97 "**Project**" means either the Project or the Project Variant, once determined in accordance with Article 3, together with Developer's rights and obligations under this Agreement.

1.98 **"Project Open Space"** means the privately owned, publicly accessible open space described in Exhibit I.

1.99 "**Project Site**" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

1.100 **"Project Variant"** means the mixed use development project described in Recital C and Exhibit B.2 and the Approvals.

1.101 "**Public Health and Safety Exception**" has the meaning set forth in Section 6.10.1.

1.102 **"Public Improvements"** means the following improvements: (i) new sidewalks and sidewalk amenities at a width and design to be determined by DPW and Planning Department staff in accordance with the Better Streets Plan, Central SOMA Plan, and Planning Code, (ii) curbs on the portions of Brannan, Fifth, Sixth, and Morris Streets adjoining the Project Site as outlined in the drawings attached to the Approvals from the Planning Commission; (iii) off-site public open space improvements under the elevated portion of Interstate-80 between.

1.103 **"Relocation Date"** means the date on which all of the Vendors who wish to be relocated to the Temporary Relocation Facility, or to the Permanent Off-Site Facility, as applicable, are relocated by Developer in accordance with the Tri-Party Agreement.

1.104 "**Relocation Matters**" has the meaning set forth in Section 3.3.

1.105 "**Relocation Option During Litigation Pendency**" has the meaning set forth in Section 3.8.2(d).

1.106 "**Relocation Site Approval**" means land use approvals and Planning Code exceptions applicable to the Temporary Relocation Site at 2000 Marin set forth on Exhibit Q, and any land use approvals, entitlement, or permit, from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Relocation Site located at 2000 Marin by the Existing Subtenants and Pre-Development Subtenants during the construction of the Project.

1.107 "**SFFD**" means the San Francisco Fire Department.

1.108 "**SFFM**" means San Francisco Flower Mart LLC, a California limited liability company.

1.109 "**SFMTA**" means the San Francisco Municipal Transportation Agency.

1.110 "**SFPUC**" means the San Francisco Public Utilities Commission.

1.111 "**SFPUC Capacity Charges**" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

1.112 "**Stay Notice**" has the meaning set forth in Section 3.3.

1.113 "**Stay Option**" means Developer construction of a New Wholesale Flower Market at the Project Site.

1.114 "**Subdivision Code**" means the San Francisco Subdivision Code.

1.115 "**Subdivision Map Act**" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.116 "**Temporary Relocation Facility**" means the temporary flower market facility to be built by Developer (if at all) at no cost to the City or to the flower market Vendors, and meeting the requirements of Exhibit E.

1.117 **"Temporary Relocation Site"** means a Viable site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Relocation Facility. In the event the Stay Option is exercised, the Temporary Relocation Site will be at 2000 Marin so long as no other mutually agreeable Viable temporary site is selected by the Parties and Developer has entered into an Interim Lease for 2000 Marin.

1.118 "**Tenant Association**" means the San Francisco Flower Market Tenants' Association.

1.119 "**Tenant Option Period**" has the meaning set forth in Section 3.3.

1.120 "**Term**" has the meaning set forth in Section 2.2.

1.121 "**Third-Party Challenge**" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals, Later Approvals, the CPE or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

1.122 "**Transfer," "Transferee" and "Transferred Property**" have the meanings set forth in Section 13.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

1.123 "**Transfer Agreement**" means that certain Agreement for Transfer of Real Estate attached as Exhibit S for the transfer of property outside the Project Site from Developer to the City to be used by the City for the development of affordable housing or to fund the development of affordable housing, as may be determined by City.

1.124 "**Transfer Parcel**" means vacant, unimproved land within the Central or Western SoMa Plan Area, not less than 14,000 square feet, identified by Developer and acceptable to MOHCD, for conveyance to the City in accordance with the Transfer Agreement;

1.125 "**Transportation Program**" means the transportation program set forth in Exhibit J.

1.126 "**Tri-Party Agreement**" means that certain Tri-Party Agreement among

Developer, the Tenant Association, and the SFFM, dated as of June 26, 2015, and amended and restated on _____, 2019.

1.127 "**Ultimately Granted**" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the CPE shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the CPE, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the CPE, and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

1.128 "**Vendors**" means the Existing Subtenants and Pre-Development Subtenants that wish to be relocated to the Temporary Relocation Facility or the Permanent Off-Site Facility, as the context requires, in accordance with the Tri-Party Agreement and either the Pre-Development Master Lease or Permanent Off-Site Master Lease, as applicable.

1.129 "**Vested Elements**" has the meaning set forth in Section 6.1.

1.130 "**Viable**" has the meaning set forth in Section 3.7 with respect to Permanent Off-Site Facility. For a Temporary Relocation Site, "Viable" means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary retail uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can

accommodate the design and specifications set forth in Exhibit E for the Temporary Relocation Facility; (iv) the site is owned by Developer or under an Interim Lease with Developer; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit E for the Temporary Relocation Facility, or on which such a building could be constructed by Developer.

1.131 "**Workforce Agreement**" means the Workforce Agreement attached hereto as Exhibit O.

1.132 "**Zappettini Parcel**" means Assessor's Lots 047 and 048 on Block 3778.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative.

2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter (the "**Initial Term**"), unless extended or earlier terminated as provided herein, provided however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to terminate this Agreement with respect to the first Phase upon completion of the first Phase, including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the first Phase during the Initial Term and thereafter continues to diligently prosecute the first Phase to completion, and is not in Default (or has cured a Default pursuant to Section 10.3) under this Agreement between the date of exercise and the date the Initial Term expires, then Developer shall have the right to extend the term of this Agreement for an additional five (5) years (the "**Extended Term**") by delivering to the City, at

any time during the last year of the Initial Term, a notice of extension. The 5-year extension shall be automatic upon Developer's delivery of the extension notice unless Developer is in Default (not including a Default that was cured pursuant to Section 10.3) at the time Developer sends the notice or before the start of the Extended Term, in which case the City may reject the notice by written notice of rejection to Developer. The term of this Agreement (the "**Term**") shall mean the Initial Term plus, if applicable, the Extended Term. The performance period or the term for any Approval or Later Approval shall be for the longer of the Term or the performance period or term otherwise applicable to such Approval or Later Approval. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2.3 Phasing. Developer anticipates completing Phase 1(a) first, before Phase 1(b) or Phase 1(c); however, Developer may alter the anticipated phasing, including completion of multiple Phases simultaneously, so long as the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) described in Exhibit H are completed prior to Developer's receipt of the first certificate of occupancy for any Phase or portion thereof.

3. TEMPORARY RELOCATION SITE AND PERMANENT OFF-SITE FACILITY

3.1 Temporary Relocation Site. Before Developer may begin demolition on any portion of the Project Site other than the Zappettini Parcel, Developer shall (a) obtain the exclusive right to occupy (based on an Interim Lease or ownership interest) improved or unimproved real property for use of the Temporary Relocation Site, consistent with the requirements of the Tri-Party Agreement and this Agreement, (b) complete the Temporary Relocation Facility in accordance with the specifications set forth in Exhibit E, and (c) move the

Vendors that occupy the Existing Flower Market as of the Relocation Date and wish to be relocated to the Temporary Relocation Facility at no cost to the Vendors in accordance with the Tri-Party Agreement. Developer shall ensure that the Vendors have the continuing right to occupy the Temporary Relocation Facility under the Interim Lease, on the same terms of their then-existing subleases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than six (6) years, including any extension options, from the Interim Lease commencement date; provided the City may agree to a shorter term if the City determines that less time is needed for the completion of construction of the New Wholesale Flower Market or the Permanent Off-Site Facility, whichever is the case. Notwithstanding the foregoing, Developer may skip the Temporary Relocation Facility and move the Vendors straight to the Alternative Permanent Site prior to demolition on any portion of the Project Site other than the Zappettini Parcel if the Permanent Off-Site Option is selected when the Permanent Off-Site Facility at the Alternative Permanent Site is complete.

3.2 Permanent Off-Site Option or Stay Option. As set forth in this Article 3, the City shall elect either the Permanent Off-Site Option or the Stay Option. Following the City's election, Developer shall either (i) complete the New Wholesale Flower Market at the Project Site under the Stay Option, or (ii) complete the Permanent Off-Site Facility at the Alternative Permanent Site under the Permanent Off-Site Option.

3.3 Tenant Option Period. Tenant Association, acting through its counsel, will send to the City, with a copy to Developer, a notice requesting that the City proceed with the Stay Option in the form attached as Exhibit G-2 (the "**Stay Notice**") or the Permanent Off-Site Option in the form attached as Exhibit G-3 (the "**Permanent Off-Site Notice**") on or before thirty (30) days after the Effective Date ("**Tenant Option Period**"). The Stay Notice or the Permanent Off-

Site Notice shall be sent by the Tenant Association's counsel, confirming that the Tenant Association has affirmatively voted and approved, at a duly noticed and held election in accordance with the Tenant Association's bylaws to choose either the Stay Option or the Permanent Off-Site Option, and shall include, substantially in the form and content in the "Tenant Association Release and Indemnity" included in Exhibits G-2 and G-3, (1) a release of any claims by the Tenant Association against the City regarding this Agreement, the Tri-Party Agreement and any other related documents, the Temporary Relocation Site, New Wholesale Flower Market, the Alternative Permanent Site, and the relocation of Vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (2) a release of any claims by the Tenant Association against Developer for the Relocation Matters, but excluding all of Developer's prospective obligations under this Agreement and any other agreement between the Tenant Association and Developer; and (3) an indemnity by the Tenant Association, in favor of the City and Developer, for any claims made by any flower market vendor challenging any of the Relocation Matters.

3.4 Stay Option Exercise. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Tenant Option Period, the City will send the Exercise Notice in the form attached as Exhibit G-1 (the "**Exercise Notice**") to Developer within five business (5) days after receipt of the Stay Notice, electing the Stay Option if, on before the date that is sixty (60) days after the expiration of the Tenant Option Period ("**Alternative Option Period**"), which may be extended at Developer's request by an additional thirty (30) days or longer ("**Extended Alternative Option Period**"), Developer delivers to the City, with a copy to the Tenant Association, an executed Interim Lease for the Temporary Relocation Facility or proof of Temporary Relocation Site ownership. If the Stay Option is exercised the Permanent Off-Site

Option shall terminate and be no further force or effect. Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.

3.5 Permanent Off-Site Option Exercise. If the Tenant Association elects the Permanent Off-Site Option and sends the Permanent Off-Site Notice to the City before the end of the Tenant Option Period, the City shall exercise the Permanent Off-Site Option if, on or before the expiration of the Alternative Option Period or the Extended Alternative Option Period, as applicable, Developer delivers to the City, with a copy to the Tenant Association, preliminary conceptual plans for a Viable location in San Francisco for the Permanent Off-Site Facility, and the City agrees that the proposed Alternative Permanent Site is Viable. If the Developer does not deliver the above-mentioned conceptual plans in a timely manner or if the City does not agree that the Alternative Permanent Site is Viable, the Extended Alternative Option Period is extended until such time when the plans are delivered to the City or the City agrees that the Alternative Permanent Site is Viable, as applicable. The City shall exercise the Permanent Off-Site Option by delivery of the Exercise Notice to Developer in the form attached as Exhibit G-1 within five (5) business days after receipt of the above-mentioned information from Developer.

3.6 Tenant Failure to Exercise; Final City Election. If the City does not receive the Permanent Off-Site Notice or the Stay Notice before the end of the Tenant Option Period, the City has the right, in its sole discretion, to elect either the Permanent Off-Site Option or the Stay Option based upon all of the information available to it. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within fifteen (15) days after the Alternative Option Period or the Extended Alternative Option Period, as applicable. If the City fails to send the Exercise Notice by the end of such fifteen (15) day period,

then Developer shall have the right to choose between the Stay Option and the Permanent Off-Site Option.

3.7 Permanent Off-Site Facility Construction. The Permanent Off-Site Option is designed to provide for the renovation of existing building(s) and/or construction of new building(s) by Developer in order to create a permanent wholesale flower market at an Alternative Permanent Site (the "**Permanent Off-Site Facility**"). The Permanent Off-Site Facility constructed by Developer shall be on a Viable Alternative Permanent Site. "**Viable**" for purposes of an Alternative Permanent Site means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is not a publicly owned site; (iii) the site is mutually agreeable to Developer and Tenant Association; (iv) the site is either owned by Developer or leased by Developer for a term of at least 34.5 years, as approved by the City; and (v) any lienholder with an interest in the site superior to the Permanent Off-Site Master Lease has provided reasonable non-disturbance protections to the Master Tenant and to any subtenants under the Permanent Off-Site Master Lease in accordance with the Tri-Party Agreement and the Permanent Off-Site Master Lease.

3.8 Completion of Design and Construction Documents. Following exercise of the Permanent Off-Site Option, Developer shall complete design and construction documents for the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease, submit applications for the Permanent Off-Site Approvals to the City, and shall construct the Permanent Off-Site Facility in accordance with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease.

3.8.1 If the Permanent Off-Site Option is exercised and any of the following circumstances occur: (i) the Permanent Off-Site Entitlement Approvals are not initially granted within the approval deadlines for environmental determinations specified

by Section 1(a) of Executive Directive No. 17-02 issued by Mayor Edwin M. Lee, starting from the date of receipt of Developer's complete response to the first Notice of Planning Department Requirements issued by the Planning Department, subject to a 90-day cure period for the City (such period to commence upon written notice from Developer to the City and SFFM) to initially grant such Permanent Off-Site Entitlement Approvals and an extension period of up to one hundred twenty (120) days in the event that an administrative appeal is filed challenging the Permanent Off-Site Entitlement Approvals, and provided that in no case shall the approval time period be less than nine (9) months; (ii) the Permanent Off-Site Building Approvals are not finally granted within six (6) months starting from later to occur of the date the Permanent Off-Site Entitlement Approvals are initially granted or the date of acceptance by the City of a complete application for Developer's first site permit or first building permit for the Alternative Permanent Site, subject to a 90-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the City to finally grant such Permanent Off-Site Building Approvals and subject to an extension for the period of any appeal of the Permanent Off-Site Building Approvals; provided that the City agrees that it will process the Permanent Off-Site Building Approvals in parallel with the pendency of the Permanent Off-Site Entitlement Approvals in accordance with its standard practices; (iii) an administrative appeal or judicial challenge is filed by Tenant Association or SFFM challenging the Permanent Off-Site Approvals, subject to a 90-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for such parties to withdraw the administrative appeal(s) or expunge judicial challenge(s); or (iv) a judicial challenge is filed by any party challenging the Alternative Permanent Site

Approvals for the Permanent Off-Site Facility that results in the issuance of an injunction prohibiting the issuance of building permits, commencement of construction, and/or occupancy of the Permanent Off-Site Facility pursuant to the Permanent Off-Site Approvals, subject to a 120-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the injunction to be lifted, then all of the following shall apply:

(a) Developer may terminate the Pre-Development Lease by delivering six (6) months prior written notice to SFFM, with a copy to the City, and notwithstanding Section 3.1 requirements regarding commencement of demolition on the Project Site to the contrary, upon the Pre-Development Lease termination Developer may begin demolition of the Project Site and construction of the Project; and

(b) If Developer terminates the Pre-Development Lease, then upon delivery of Developer's termination notice pursuant to Section 3.8.1(a), Developer shall provide SFFM a right to relocate to the Permanent Off-Site Facility pursuant to the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent Off-Site Facility in an "as is" condition ("**As Is Relocation Option**"), which means the condition existing at the Alternative Permanent Site as of SFFM's exercise of the As Is Relocation Option; and

(c) Within 60 days of the receipt of Developer's termination notice, SFFM shall either: (i) accept the As Is Relocation Option, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent

Off-Site Facility in an "as is" condition per Section 3.8.1(b), and Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000) for any tenant improvements SFFM elects to complete to the Permanent Off-Site Facility; or (ii) reject, or fail to timely exercise, the As Is Relocation Option, in which case upon the effective date for the termination of the Pre-Development Lease, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years but less than 35 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco; and

(d) In the cases described in Section 3.8.1 (i), (ii), or (iv) above, then in addition to its choice of remedies described in the foregoing sentence and despite termination of the Pre-Development Lease, in lieu of the initial payment of $15,000,000, SFFM may choose to require Developer to diligently pursue the Permanent Off-Site Approvals and complete construction of the Permanent Off-Site Facility consistent with Exhibit F-1 and the Permanent Off-Site Master Lease for a period of

twenty-four (24) months after SFFM's election, and if completion (i) occurs by the end of such period then upon completion Developer shall relocate all Vendors who wish to be relocated to the Permanent Off-Site Facility pursuant to the Permanent Off-Site Master Lease, or (ii) does not occur by the end of such period then Developer shall pay $15,000,000 to SFFM upon expiration of such period.

3.8.2 In the event that a filing and pendency of a judicial challenge on the Permanent Off-Site Approvals exists and was filed by a party other than Tenant Association or SFFM, and no injunction is issued preventing the issuance of the Permanent Off-Site Approvals, then during the pendency of such challenge Developer may not effect termination of the Pre-Development Lease prior to the conclusion of such challenge and may either wait for resolution of the challenge, or may proceed with the construction of the Permanent Off-Site Facility consistent with the Permanent Off-Site Approvals and Exhibit F-1 in which case all of the following shall apply:

(a) Unless prohibited by injunction, City Agencies shall not stop the processing or issuance of building permits or approvals due to such judicial challenge and, provided that Developer obtains any necessary Later Approvals, shall allow development of the Permanent Off-Site Facility to proceed consistent with the Permanent Off-Site Approvals; and

(b) Developer shall give SFFM a right to relocate to the Permanent Off-Site Facility after Developer's completion of the Permanent Off-Site Facility in accordance with Exhibit F-1 and pursuant to the Permanent Off-Site Approvals ("**Relocation Option During Litigation Pendency**"); and

(c) Within 60 days of its receipt of Developer's

Relocation Option During Litigation Pendency notice, SFFM shall either: (i) accept the Relocation Option During Litigation Pendency, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for SFFM acceptance of any limitations or restrictions (whether occupancy or improvement related) which may be imposed by the verdict in the judicial challenge (subject to SFFM's right to pursue any approvals or other authorizations to eliminate any compliance issues established by such a verdict), in which case Developer shall complete construction of the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1, and upon the Relocation Date the Pre-Development Lease shall terminate; or (ii) reject or fail to timely exercise the Relocation Option During Litigation Pendency, in which case the Pre-Development Lease shall terminate no less than six (6) months after delivery of the Relocation Option During Litigation Pendency notice, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco,

at Developer's sole discretion.

3.8.3 In the event that the issuance of any element of the Permanent Off-Site Approvals is delayed as a result of (i) Developer's failure to provide requested additional information or materials from City Agencies or to respond to City Agencies in a prompt and expeditious manner, or (ii) the filing or pendency of an administrative appeal or judicial challenge to any of the Permanent Off-Site Approvals by Developer or its Affiliate, then the corresponding period for the affected Permanent Off-Site Approval shall be extended by the length of such delay.

3.9 City Decisions. Except where otherwise noted, all discretionary decisions relating to City actions under this Article 3 shall be made jointly by the Planning Director and the OEWD Director of Development. The Planning Director and the OEWD Director of Development will consult other City officials as they deem appropriate.

3.10 No City Liability. Following exercise of the Permanent Off-Site Option, OEWD and Planning staff shall use good faith efforts to assist Developer with the development of the Permanent Off-Site Facility at the Alternative Permanent Site. Following exercise of the Stay Option, OEWD and Planning staff shall use good faith efforts to monitor and enforce Developer's obligations to build the New Wholesale Flower Market at the Project Site. But nothing in this Agreement shall create any City liability to Developer, to the Tenant Association, to SFFM, or to any flower market vendor relating to the New Wholesale Flower Market, the Permanent Off-Site Facility, or to the Relocation Matters. All interested persons are given notice, and understand and agree, that completion of the New Wholesale Flower Market or the Permanent Off-Site Facility will likely involve many challenges, and that no particular outcome can be guaranteed. By entering into this Agreement, the City is not guarantying the successful completion of the

replacement market or any other result. The City would not be willing to enter into this Agreement without this provision. Without limiting Developer's indemnity obligations in this Agreement, if and to the extent that City is required to expend any funds or staff time defending this Agreement or any discretionary decisions made by the City related to this Article 3 or the Relocation Matters from a claim made by the Tenant Association or any flower market vendor, such funds and the costs of such staff time shall be included in City Costs.

3.11 Tri-Party Agreement; Declaration of Restrictions. Developer shall comply with its key obligations under the Tri-Party Agreement, including compliance with the rent schedule provided in Exhibit D and other key obligations summarized in Exhibit D. If the Permanent Off-Site Option is exercised, then prior to the earlier to occur of (i) issuance of the first certificate of occupancy for any portion of the Project (provided that SFFM has not rejected or failed to timely exercise either the As Is Relocation Option or the Relocation Option during Litigation Pendency pursuant to Section 3.8.1 or Section 3.8.2, in which case no Declaration of Restrictions shall be recorded against the Alternative Permanent Site), or (ii) commencement of the term of the Permanent Off-Site Master Lease, Developer shall record a Declaration of Restrictions (the "**Declaration of Restrictions**") against the Alternative Permanent Site consistent with the form of document attached in Exhibit D-1 and revised as appropriate with such terms and conditions relating to this Agreement, the Permanent Off-Site Master Lease, and the Alternative Permanent Site, as the City may reasonably require. The term of the Declaration of Restrictions shall end upon termination of the Permanent Off-Site Master Lease and any Deemed Consent Subleases (as defined in the Permanent Off-Site Master Lease), and upon such termination the Declaration of Restrictions shall no longer affect the Alternative Permanent Site. The City requires recordation of the Declaration of Restrictions to assure that Developer's

commitments to the rent subsidies pursuant to the Permanent Off-Site Master Lease and its provision of the public benefit of a continued viable wholesale flower market in San Francisco are enforced. Developer's breach of the obligations described in this Section 3.11, Exhibit D, or in the Declaration of Restrictions, following the notice and cure periods set forth in Section 10.3, shall be a material breach of this Agreement. Developer will provide the City with any information it requests relating to the Declaration of Restrictions, the Alternative Permanent Site, the Permanent Off-Site Master Lease, and the Permanent Off-Site Facility in a timely manner, including without limitation information customarily requested by the City's Assessor pursuant to California Revenue & Taxation Code, Sections 71, 441, and 470 and the right to audit revenues and expenditures relating to the Alternative Permanent Site, the Permanent Off-Site Master Lease, and the Permanent Off-Site Facility. The Declaration of Restrictions shall not be effective until at least one day after the Lease Commencement Date (as defined in the Permanent Off-Site Master Lease). The provisions of this Section 3.11 shall survive the expiration of this Agreement.

3.12 Joint Project Design Review. If the Permanent Off-Site Option is exercised, then Developer will establish a Joint Project Design Review Committee to oversee the design standard of the Permanent Off-Site Facility and to ensure its consistency with the specifications set forth in Exhibit F-1. The Joint Project Design Review Committee will have five members, comprised of (i) the OEWD Director of Development or his or her designee, (ii) the Director of Planning or his or her designee, (iii) a SFFM representative, (iv) the project architect, and (v) a Developer representative. The Joint Project Design Review Committee will be chaired by the OEWD Director of Development and will meet monthly, unless the chair determines otherwise, to discuss and attempt in good faith to resolve any disputes regarding the design standard and consistency with the specifications set forth in Exhibit F-1. If any disputes

regarding the design standard and consistency with the specifications cannot be resolved among the members of the Joint Project Design Review Committee, such disputes shall be resolved in the sole discretion of the OEWD Director of Development, in consultation with the Planning Director. Developer agrees to abide by the determination of the OEWD Director of Development, and any challenge to such determination shall be a material breach of this Agreement. In addition to the regular meetings described above, Developer shall not restrict communication among the project architect and SFFM representatives, but shall instead direct the project architect to engage in regular formal and informal consultation with SFFM representatives in such a manner as is reasonably necessary to facilitate meaningful input from SFFM.

4. GENERAL RIGHTS AND OBLIGATIONS

4.1 Project and Project Variant's Compliance with Certain Design Requirements. Concurrently with the approval of this Agreement, certain Planning Code Text Amendments applicable to the Project were approved by the Board of Supervisors, as listed in Exhibit R.

4.2 Development of the Project. Developer shall have the vested right to develop the Project and the Temporary Relocation Facility in accordance with and subject to the provisions of this Agreement, the Approvals, Later Approvals, and Relocation Site Approvals with respect to 2000 Marin, and the City shall consider and process all Later Approvals for development of the Project and the Temporary Relocation Facility at the Temporary Relocation Site, in accordance with and subject to the provisions of this Agreement. The Parties acknowledge (i) that immediately before the approval of this Agreement, the City approved and granted the Approvals for the Project as listed in Exhibit K, and (ii) that Developer may proceed in accordance with this Agreement with the construction and, upon completion, use and

occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals, as needed. In the event the Permanent Off-Site Option is elected, Developer may re-evaluate the design of the Project Variant and pursue modifications of the Approvals including alterations to the design, massing, location and overall configuration of the Project Variant, but not including an increase to the maximum square footage or shadow cast by the Project Variant when considered in its entirety. Changes to the Project Variant or Project that are not Material Changes do not require an amendment to this Agreement, and will be processed by the City in accordance with Section 6.3 and Section 6.4. Provided that Developer obtains any required Later Approvals and any Non-City Approvals relating to the issuance of permits for demolition, shoring, and below-grade improvements, and so long as other conditions to the issuance of demolition permits, including Section 3.1, are met, the City will not withhold issuance of permits for demolition, shoring, and below-grade improvements, including but not limited to the basement and parking garage areas, for the Project Site during the pendency of modifications to the Approvals.

4.3 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement.

4.4 Community Facility Districts. The City intends to form a CFD under the CFD Act to finance or seek reimbursement of certain costs as set forth in the SOMA Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the CFDs or other charges set forth in the Central SOMA Plan, or the issuance of additional bonds or other financing secured by CFD special taxes or the application of bond proceeds consistent with

the SOMA Plan. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Central SOMA Plan fees or the CFD special taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in any sale agreement or lease for all or part of the Project Site.

4.5 Transfer Parcel. Before the issuance of the first construction document for the Project, the City, acting through MOHCD, and Developer shall enter into the Transfer Agreement, substantially in the form attached as Exhibit S, for the Transfer Parcel proposed by Developer and approved by MOHCD. Developer shall convey the Transfer Parcel to the City in accordance with the Transfer Agreement on or before issuance of the first certificate of occupancy for any portion of the Project's first building. The City shall use the Transfer Parcel to develop affordable housing; provided if the City decides after acceptance that it cannot develop affordable housing on the Transfer Parcel, the City may sell the Transfer Parcel and use the net sales proceeds for affordable housing within the boundaries of Central SoMa, Eastern SoMa or Western SoMa Area Plans.

5. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

5.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 5 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of

Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is an essential element to this Agreement and is tied to a specific phase of the Project, as described in the Phasing Plan or elsewhere in this Agreement (with each Phase, an "**Associated Community Benefit**"). Time is of the essence with respect to the completion of the Community Benefits.

5.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefit Programs**"):

(a) the construction and development of the New Wholesale Flower Market on the Project Site or alternatively, if the Permanent Off-Site Option is exercised, the construction and development of the Permanent Off-Site Facility at the Alternative Permanent Site in accordance with Article 3;

(b) the rent subsidies pursuant to the Tri-Party Agreement, in accordance with the rent schedule included in Exhibit D and the Declaration of Restrictions attached as Exhibit D-1;

(c) the relocation of the Existing Tenants and Pre-Development Subtenants to the Temporary Relocation Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or to the Alternative Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party Agreement, including the requirement that all Existing Tenants and Pre-Development Subtenants

shall be moved together at one time (the collective obligations in subparagraphs (a) through (c) shall be referred to as the "**Flower Market Obligations**");

(d) the Workforce Program, as described in Exhibit O;

(e) the Project Open Space and Public Improvements, as described in Exhibit I;

(f) the Transportation Demand Management Program attached as Exhibit J;

(g) conveyance of the Transfer Parcel to the City, in accordance with the Transfer Agreement, at no cost to City;

(h) under the Project Variant, Developer shall construct a subsidized child care center in Phase 1(a), consisting of approximately 23,000 square feet in accordance with the Approvals, for lease to a qualified non-profit child care operator for ten (10) years at a cost not exceeding landlord's actual costs for operating expenses;

(i) the payment of $5 million to Mercy Housing California, to pay for costs related to the Sunnydale Hub project, on or before the issuance of the first construction document for the Project; and

(j) the payment of $200,000 within sixty (60) days following the Effective Date, and each anniversary thereafter annually for a period of ten (10) years (i.e. a total of $2,000,000), to a fund designated by the City's Controller in consultation with the City's District 6 Supervisor to support pressure washing and/or steam cleaning of sidewalks and street cleaning efforts in SoMa, as designated by the District 6 Supervisor in consultation with the City's Department of Public Works.

5.1.2 Conditions to Performance of Community Benefits.

Developer's obligation to perform each Associated Community Benefit is expressly conditioned upon each and all of the following conditions precedent:

(a) All Approvals and Later Approvals for the applicable Phase to which the Associated Community Benefit is tied shall have been Ultimately Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and Relocation Site Approvals with respect to 2000 Marin, if applicable) have not been obtained or Ultimately Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit with a Phase, the City may withhold a certificate of occupancy for the Building in that Phase until the required Associated Community Benefit is completed or Developer has provided the City with adequate security for completion of such Associated Community Benefit (*e.g.,* a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney); and

(b) Developer shall have Commenced Construction of the Building in the applicable Phase to which the Associated Community Benefit applies.

5.2 No Additional CEQA Review Required; Reliance on CPE and Addendum for Later Approvals. The Parties acknowledge that the CPE and Addendum prepared for the Project and 2000 Marin as the Temporary Relocation Site, respectively, complies with CEQA. The Parties further acknowledge that (a) the CPE and Addendum contain a thorough environmental analysis of the Project, including the Temporary Relocation Site (with respect to 2000 Marin), and demonstrate that the Project's impacts were previously analyzed in the Central

SOMA FEIR and the Addendum, as the case may be; (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the CPE and Addendum, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with the Temporary Relocation Site or a change in the location of the Temporary Relocation Site, the Alternative Permanent Site, affordable housing dedication site, or any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

5.3.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all mitigation measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the CPE and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address

significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

5.3 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

5.4 City Cost Recovery.

5.4.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 6.7.

5.4.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

5.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty

(60) days following receipt of a written invoice complying with Section 5.5.4 from the City.

5.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 5.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

5.4.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

5.5 Prevailing Wages. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720 - 1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all persons performing labor in the construction of Public Improvements under this Agreement will be: (1) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), and (2) provided the same hours, working conditions, and benefits as provided for similar work performed in San Francisco County in Administrative Code section 6.22(f). Developer further agrees to employ Apprentices on the Public Improvement work in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing the Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. City's Office of Labor Standards Enforcement ("**OLSE**") enforces labor laws,

and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

5.6 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under

applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

6. VESTING AND CITY OBLIGATIONS

6.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Accordingly, the City in granting the Approvals and vesting them through this Agreement is limiting its future discretion with respect to Later Approvals and Relocation Site Approvals to the extent they include elements that were approved as part earlier Approvals. The criteria for City review and approval of Later Approvals is set forth in Section 6.3. Consequently, the City shall not use its discretionary authority in considering and approving an application for Later Approvals or Relocation Site Approvals with respect to 2000 Marin to change the policy decisions reflected by the Approvals or otherwise to prevent or to delay development of the Project or the Project Variant as set forth in the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses,

height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access and parking (including parking ratios), and the Prop. M allocation made for the Project on the Effective Date (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements), and subject to modification of the Project Variant in accordance with any Later Approval. The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals and Relocation Site Approvals with respect to 2000 Marin, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval and Relocation Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

6.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 6.7, and (iii) this Agreement (collectively, "**Applicable Laws**").

6.3 Criteria for Later Approvals. Developer shall be responsible for obtaining applicable Later Approvals before the start of construction that requires such approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval

based upon an item or element that is consistent the Approvals, and shall consider all such applications in accordance with City's customary practice, normal discretion and Applicable Laws, subject to the requirements of this Agreement. The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Approvals and the Planning Code, and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" or the Temporary Relocation Site under this Agreement. The Parties acknowledge that Developer may re-evaluate and pursue Later Approvals to modify the Project Variant, including alterations to the design, massing, location and overall configuration of the Project Variant, but not including an increase to the maximum square footage or shadow cast by the Project Variant when considered in its entirety.

6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from Developer of a completed application (with any required supporting documentation) for one of more Later Approvals, Relocation Site Approvals, or Permanent Off-Site Approvals, the City shall use reasonable efforts to promptly commence and complete all steps necessary to act on such applications in a timely way and in accordance with applicable Laws.

6.5 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Mechanical

Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, and the Public Works Code and Subdivision Code and other uniform construction codes applicable on a City-Wide basis. This shall not be construed to prohibit exceptions, equivalencies, or other administrative relief available under such Codes.

6.6 Denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. If the City denies any application for a Later Approval that implements a Building that is part of the Project or a Relocation Site Approval or Permanent Off-Site Approval for the Temporary Relocation Site or Alternative Permanent Site, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with this Agreement, earlier Approvals, and Applicable Laws, and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, earlier Approvals and Applicable Laws, and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

6.7 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**New City Laws**") shall apply to the Project, the Project Site, and the Temporary Relocation Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

6.7.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project or the Temporary Relocation Site at 2000 Marin, or any part thereof, or otherwise require any reduction in the square footage, number, or size of the proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from those permitted under the Approvals;

(b) limit or reduce the height, bulk, or mass of the Project, or any part thereof, or otherwise require any reduction in the height, bulk, or mass of individual Buildings or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, or the amount or location of parking or loading from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the consideration of the Phase 1(b) Office Allocation as specified in Section 6.8(b), or demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

(i) impose any regulation or other requirement that controls commercial rents or purchase prices charged within the Project or on the Project Site, except as set forth in this Agreement and the Tri-Party Agreement;

(j) materially limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 6.9.2); or

(l) Reduce the amount of allowable parking or loading for the Project or the Temporary Relocation Site at 2000 Marin; or

(m) Negatively alter the Phase 1(b) Office Allocation priority in Section 6.8(b).

6.7.2 Developer may, at its sole discretion, elect to have a New City Law that conflicts with this Agreement be applied to the Project or the Project Site by giving the City written notice of its election to have a New City Law applied, in which case such New City Law shall be deemed to be an Existing Standard;

6.7.3 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge parcels within the Project Site as is required or may be desirable in order to developer a particular phase of the Project the Project or to lease, mortgage or sell all or some portion of it. The specific boundaries of

parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals or Later Approvals.

6.8 Proposition M Office Allocation. The Project includes up to 2,061,380 gross square feet ("**GSF**") of office development proposed to be constructed in three phases: (i) Phase 1(a) with up to 1,384,578 GSF of office, (ii) Phase 1(b) with up to 351,895 GSF of office; and (iii) Phase 1(c) with up to 324,907 GSF of office. Before the Effective Date, by Motion No. 20485 (the "**Office Allocation Motion**"), the Planning Commission adopted findings pursuant to Planning Code Section 321(b)(1) that up to 2,061,380 GSF of office development at the Project Site contemplated by this Agreement and the Central SOMA Plan and Design Guidelines promotes the public welfare, convenience and necessity, and in doing so it considered the criteria in Planning Code Section 321(b)(3)(A)-(G). The findings contained in the Office Allocation Motion are incorporated into this Agreement. Because the office development contemplated by the Project has been found to promote the public welfare, convenience and necessity, the determination required under Section 321(b), where applicable, will be deemed to have been made for the entire Project (i.e., up to 2,061,380 GSF of office development undertaken consistent with the Project).

(a) In the Office Allocation Motion, the Planning Commission also granted up to 1,384,578 GSF of Prop M office allocation for Phase 1(a).

(b) Additional Prop M allocations for Phase 1(b) and Phase 1(c) are necessary for completion of the Project and to support the viability of the Associated Public Benefits for each respective Phase. An application for the Phase 1(b) and 1(c) Prop M allocations is on file with the Planning Department under Case No. 2017-000663OFA. If Developer is not then in default under this Agreement, the Planning Commission shall consider the Phase 1(b) office allocation at its first regularly scheduled hearing on or after October 17, 2021, unless otherwise requested by Developer. Developer shall notify the Planning Director not less than 60 days in advance of the hearing date to ensure that the matter is added to the calendar, and Developer has the right to make changes to its existing application at any time before such notification date. Provided the design of the Project remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to additional office allocation of no less than 351,895 gsf under Sections 320-325 over office development proposed elsewhere in the City, subject to the existing priorities previously given to (a) the Mission Bay South Project Area; (b) the Transbay Transit Tower proposed for development on Lot 001 of Assessor's Block No. 3720; and (c) the Treasure Island development project. Notwithstanding the above, no office development project can be approved that would cause the then applicable annual limitation contained in Planning Code Section 321 to be exceeded, and the Planning Commission shall consider the design of the Project to confirm that it remains consistent with the Planning Commission's findings under Section 321(b)(3)(A)-(G) in the Office Allocation Motion. The requirements for Planning Commission approval described above will apply to the Project except to the extent such application would be prohibited by applicable law.

(c) Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which either the Stay Option or the

Permanent Off-Site Option is exercised by the City to obtain a site permit for office development for the applicable phase of the Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

6.9 Fees and Exactions.

6.9.1 Generally. The Project and the Temporary Relocation Site at 2000 Marin shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 6.7, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or the Temporary Relocation Site at 2000 Marin, or impose new conditions or requirements for the right to develop the Project or the Temporary Relocation Site at 2000 Marin (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 6.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

6.9.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project (or the Project Variant) or components thereof except for (i) those Impact Fees and Exactions specifically set forth on Exhibit P, and (ii) the SFPUC Capacity Charges, as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the Parties acknowledge and agree that the

Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined; provided (i) in determining the amount of the Impact Fees and Exactions during the Initial Term only (as extended by Litigation Extension, if any), the rates will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid, and (ii) the initial Jobs Housing Linkage Fee shall not be calculated from the Effective Date, but instead shall be set based on legislation per Ordinance No. 251-19 (File No. 190548) to update the Jobs Housing Linkage Fee if adopted before the date of payment (or, once adopted, the updated Fee amount will apply to payments made after the date of adoption), and thereafter shall adjust under Planning Code Section 409 as set forth in clause (i) above. During the Extension Term (if any), Developer shall be subject to any increase or decrease in the fee amount payable and any changes to the methodology of calculation (e.g., use of a different index to calculate annual increases), but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date. No Impact Fees or Exactions shall apply to the use of the Temporary Relocation Site at 2000 Marin for pre-existing uses or for new spaces constructed for flower market tenants.

(a) Jobs-Housing Linkage Fee and Affordable Housing Site Dedication. , Developer may satisfy all or a portion of its obligation under Planning Code Section 413 by utilizing the Transfer Parcel as a land dedication alternative (the "**JHL Fee Credit**") in accordance with Planning Code Sections 249.78(e)(2) and 413.7.

(b) Central SoMa Legacy Business and PDR Support Fund. In the event the Permanent Off-Site Option is exercised pursuant to Article 3, Developer shall deposit Twenty Million Dollars ($20,000,000) into a special fund or other account designated by the City (the "Central SoMa Legacy Business and PDR Support Fund") prior to issuance of the first construction document for the Project. Central SoMa Legacy Business and PDR Support Fund shall be used by the City to provide annual business grants to the Master Tenant under the Permanent Off-Site Master Lease each year beginning in the fourth year of the lease term, up to the earlier to occur of (i) thirty-four (34) years after commencement of the Permanent Off-Site Master Lease, or (ii) exhaustion of funds in the Central SoMa Legacy Business and PDR Support Fund. The amount of such annual grant shall be determined by the City's Controller in consultation with the OEWD Director of Development, and shall be based upon the amount which, in the Controller's best judgment, will assure a continuous revenue stream during the lease term and will also provide necessary support to the Master Tenant. In its sole discretion and subject to all approvals, the City may consider contributing additional funds to the Central SoMa Legacy Business and PDR Support Fund. Notwithstanding the foregoing, if the City has not waived Twenty-Eight Million Five Hundred Thousand Dollars ($28,500,000) in Impact Fees and Exactions prior to issuance of the first construction document for the Project, then Developer shall not have any obligation to deposit funds into the Flower Market Legacy Business Fund. At the end 34 years, any unexpended funds shall be retained by the City to be used for job training, job retention, and other economic development purposes or shall be deposited into the fund from which it was diverted or the relevant successor fund.

(c) Eastern Neighborhoods Infrastructure Fee and Gateway Marker. Notwithstanding the provisions of Planning Code Section 423, Developer shall fund the design and complete the construction of an arch, monument, pillar or other physical marker, in a public location approved by the Planning Director, identifying the San Francisco Filipino Cultural Heritage District ("**Gateway Marker**"). The construction and permitting of the Gateway Marker shall be subject to the Planning Director's approval as to design and location, at his or her sole discretion following any required environmental review. Upon approval of the design, if any, the City shall enter into an in-kind agreement, using the City's standard form, to provide credit against Developer's Eastern Neighborhoods Infrastructure Impact Fees under Planning Code Section 423 in an amount equal to Developer's third party design and construction costs but not to exceed $300,000. In the event the Gateway Marker is not fully approved and permitted by the City three years after the Effective Date, the City may instead allocate $300,000 of the Developer's Eastern Neighborhoods Infrastructure Impact Fees paid, or to be paid, to the Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District, administered by the Mayor's Office of Housing and Community Development under Administrative Code Section 10.100-52.

6.9.3 Processing Fees. Developer shall pay all Processing Fees in effect, on a City-wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

6.10 Changes in Federal or State Laws.

6.10.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall

exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

6.10.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the

extent necessary or required to comply with such Law, subject to the provisions of Section 6.8.4, as applicable.

6.10.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

6.10.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 6.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 6.8 would materially and adversely affect or limit the Community Benefits (a "**Law Adverse to the City**"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 6.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the

issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Associated Community Benefits for each Building completed as set forth in Section 5.1.

6.11 No Action to Impede Approvals. Except and only as required under Section 6.8 the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 6.6.1.

6.12 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the

performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9; (v) the Effective Date of the Agreement; and (vi) the names of the Mortgagee that are subject to receiving notices under Section 11.3. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request. The City acknowledges that third parties with a property interest in the Project Site, such as mortgagees, acting in good faith, may rely upon such a certificate.

6.13 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 6. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Planning Code and the Central SOMA Plan.

6.14 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without

limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

7. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building commenced by Developer as set forth in Section 5.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when each Phase and all of the Associated Community Benefits tied to that Phase have also been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit N for the applicable property.

8.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals, and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals, and any Later Approvals, are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department (in consultation with OEWD) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. Each City Agency responsible for reviewing any Later Approvals shall designate a single employee responsible for working with Developer and the Planning Department: (i) to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) to interface with City staff responsible for reviewing

any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

8.2.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

8.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project is commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal. Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project (and therefore, there is more than one party that assumes obligations of "Developer" under this Agreement), then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project and only as to such portion,

and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

8.2.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

8.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals.

8.4 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement and the Approvals in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

9.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 9.2.

9.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation (not including any proprietary or confidential information, to the extent any exists), Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

9.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be

deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

9.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

9.2.4 Default. The rights and powers of the City under this Section 9.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of a Default.

10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

10.1 Enforcement. The only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and

Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

10.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 10.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 10.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 10.3.

10.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any

notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations, provided City shall have the right to withhold Later Approvals for all or any part of the Project Site if Developer fails to fulfill the Flower Market Obligations as and when required under this Agreement. Subject to the foregoing, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site. For purposes of this Section 10, a Party shall include all of its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any termination or other remedy against that Party may include the same remedy against all such Affiliates.

10.4 Remedies.

10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 10.4.3, 10.4.4, and 10.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

10.4.2 Termination. Subject to the limitation set forth in Section 10.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date

set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 10.3 and 13.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

10.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 10.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or

will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 10.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

10.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which Developer is in Default or Developer has failed to pay amounts due to the City under this Agreement; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City (subject to the Flower Market Obligation provisions described below). The City shall have the right to withhold a final certificate of occupancy within a Phase until all of the Associated Community Benefits tied to that Phase, together with the Flower Market Obligations, have been completed or Developer has provided the City with adequate security for completion of such Community Benefit (*e.g.*, a bond or letter of credit) as

approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney). For a Phase to be deemed completed, Developer shall have also completed all of the public open spaces and improvements for that Phase as set forth in Exhibit H or in a Later Approval; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance. Notwithstanding anything to the contrary above, the City shall have the right to withhold all certificates of occupancy and other Later Approvals Project-wide (against all Developers) if the Flower Market Obligations have not been satisfied when required. If the Payment Option has not been exercised, the Parties intend that the Post-Development Subtenants will be moved back to the Project Site first, and agree that City can withhold certificates of occupancy and Later Approvals for space at the Project Site until all of the Post-Development Subtenants (not including those who elect to move elsewhere) have moved back to the Project Site in accordance with the Flower Market Obligations.

10.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in

such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the Law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

11. FINANCING; RIGHTS OF MORTGAGEES

11.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site.

11.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 11.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 5.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

11.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

11.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 11.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period:

(i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, provided that such period is tolled for any period during which the Mortgagee is prohibited from proceeding with foreclosure proceedings, e.g. due to a bankruptcy filing, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

11.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 5.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant

to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

11.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

11.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

12. AMENDMENT; TERMINATION; EXTENSION OF TERM

12.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided that following a Transfer, the City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 8.2.2, 8.4.2, and 12.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent

it affects any rights or obligations of a City department, after consultation with that City department).

12.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to Commence Construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

12.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Phase that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Phase that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction,

interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 12.3 shall survive the termination of this Agreement.

12.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and no change to the Project that is permitted under the Central SOMA Plan shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project (or the Project Variant) as described in the Exhibits in keeping with its customary practices and the Central SOMA Plan, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

12.5 Extension Due to Legal Action or Referendum; Excusable Delay.

12.5.1 Litigation and Referendum Extension. If any litigation is filed challenging the Central SOMA Plan, the Central SOMA Plan FEIR, this Agreement, or an Approval having the direct or indirect effect of delaying this Agreement, or any Approval (including but not limited to any CEQA determinations), Relocation Site Approval, or Permanent Off-Site Approval that is initially granted prior to the Relocation Date, including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, this Agreement, Approval, Relocation Site Approval, or Permanent Off-Site Approval that is initially granted prior to the Relocation Date is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals that are initially granted prior to the Relocation Date shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals initially granted prior to the Relocation Date, the date of the initial grant of such Approval, Relocation Site Approval, or Permanent Off-Site Approval initially granted prior to the Relocation Date) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

12.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of

terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

14.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Transferee (*i.e.,* the person or entity that is the Developer for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

14.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M (including the indemnifications, the agreement and covenant not to challenge the enforceability

of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review within thirty (30) days after receipt, with such review being limited to confirming the Assignment and Assumption Agreement satisfies the requirements of this Agreement. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 13.1 shall not require the transfer of land or any other real property interests to the CMA.

14.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 13.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 9 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

14.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the

Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.

14.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

14.6 Rights of Developer. The provisions in this Section 13 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

15. DEVELOPER REPRESENTATIONS AND WARRANTIES

16.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

16.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the

agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

16.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

16.4 Notification of Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating

officer; any person with an ownership interest of more than 10% in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

16.5 Other Documents. To the current, actual knowledge of _____ and _____, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

16.6 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

17. MISCELLANEOUS PROVISIONS

17.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

17.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and

made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

17.3 Binding Covenants; Run With the Land. Pursuant to Section 65864 et seq. of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 13, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 13, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Sections 1468-1470.

17.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

17.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

17.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

17.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

17.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

17.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

17.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

17.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other or additional person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, Flower Mart Project

To Developer:

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

with a copy to:

Reuben, Junius, & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attn: Daniel Frattin or Tuija Catalano

17.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to

Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

17.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

17.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

17.15 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

17.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the

extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

17.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, or its successors and assigns, in the event of any Default by City, or for any amount, which may become due to Developer, or its successors and assigns, under this Agreement.

17.18 Non-Liability of Developer Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of Developer or affiliate of Developer shall be personally liable to City, or its successors and assigns, in the event of any Default by Developer, or for any amount, which may become due to City, or its successors and assigns, under this Agreement.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved on _____, 2019
Board of Supervisors Ordinance No. _____

APPROVED AND AGREED:

By: _____
Naomi Kelly, City Administrator

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited liability company

By: Kilroy Realty, L.P,
a Delaware limited partnership,
its Sole Member

By: Kilroy Realty Corporation,
a Maryland corporation,
its General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

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 San Francisco)

On _____, before me, _____, a 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 _____

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 San Francisco)

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State of California)
County of San Francisco)

On _____, before me, _____, a 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 _____