

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 5M PROJECT, LLC

to 807,600, gross square feet of office uses (including ground floor uses), up to 821,300 gross square feet of residential uses (including both rental and ownership units), approximately 68,700 gross square feet of other active ground floor uses, and collectively up to 1,697,600 gross square feet of new construction and renovated existing building space, approximately 331463 associated parking spaces in three subterranean levels, approximately 429 Class 1 bicycle parking spaces, approximately 66 Class 2 bicycle parking spaces, and approximately 59,500 square feet of public and private open space, all as more particularly described on Exhibit B (the "**Project**").

C. The Project is anticipated to generate an annual average of approximately 1,200 construction jobs during construction and, upon completion, approximately 3,150 net new permanent jobs, and an approximately \$12,100,000 annual increase in general fund revenues to the City.

D. 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.

E. In addition to the significant housing, jobs, urban revitalization, and economic benefits to the City from the Project, the City has determined that as a result of the development

of the Project in accordance with this Agreement additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include an increase in affordable housing that exceeds that otherwise required and is anticipated to equal thirty-three percent (33%) of the total market-rate housing for the Project; a robust workforce commitment, community benefits fees, and the rehabilitation of the Chronicle and Dempster Printing Buildings; and the retention of the Camelline Building; each as further described in this Agreement.

F. 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.

G. The Final Environmental Impact Report ("FEIR") prepared for the Project and certified by the Planning Commission on September 17_____, 2015, together with the CEQA findings (the "CEQA Findings") and the Mitigation Measures adopted concurrently therewith and set forth in the MMRP, comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the

extent they are susceptible to feasible mitigation. On _____, 2015, the Board of Supervisors, in Motion No. _____, affirmed the decisions of the Planning Commission to certify the FEIR and rejected the appeal of the FEIR certification. The information in the FEIR and the CEQA Findings were considered by the City in connection with approval of this Agreement.

H. On September 17_____, 2015, 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 adopted the CEQA findings and determined among other things that the FEIR thoroughly analyzes the Project, and the Mitigation Measures are designed to mitigate significant impacts to the extent they are susceptible to a feasible mitigation, 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 Planning Principles set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). The information in the FEIR and the CEQA Findings has been considered by the City in connection with this Agreement.

I. On _____, 2015 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 [and adopted Resolution Nos. _____].

J. On _____, 2015, the Board adopted Ordinance Nos. _____, amending the Planning Code, Zoning Map, and General Plan, and adopted Ordinance No. _____, approving this Agreement (File No. _____) and authorizing the Planning

Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2015.

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 "**5M Community Benefit Fee**" means an amount equal to eight dollars thirty-five cents (\$8.35) per square foot of new gross floor area as defined in Planning Code Section 102 of commercial or residential uses (exclusive of Existing Uses) as same is set forth in the applicable Approval.

1.2 "**5M SUD**" means Planning Code Section 249.74___ as adopted by the Board in Ordinance No. ___.

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

1.4 "**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.

1.5 "**Agreement**" means this Development Agreement, the Exhibits which have been expressly incorporated herein and any amendments thereto.

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

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

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

1.64 **"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.

1.65 **"Project"** means the mixed use development project as described in Recital B and Exhibit B and the Approvals, together with Developer's rights and obligations under this Agreement.

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

1.67 **"Public Health and Safety Exception"** has the meaning set forth in Section 5.6.

~~1.68 "Scheduling Plan" means the illustrative schedule attached hereto as Exhibit C.~~

~~1.69~~ 1.68 Intentionally left blank.

~~1.70~~ 1.69 **"SFMTA"** means the San Francisco Municipal Transportation Agency.

~~1.71~~ 1.70 **"SFPUC"** means the San Francisco Public Utilities Commission.

applicable Community Benefit. Time is of the essence with respect to the completion of the Community Benefits.

4.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the “**Community Benefit Programs**”):

- (a) the 5M Community Benefit Fee;
- (b) the Housing Program benefits as further described in Exhibit E;
- (c) the Workforce Agreement benefits including the Workforce Jobs Readiness Training as further described in Exhibit F;
- (d) the Transportation Program benefits as further described in Exhibit G;
- (e) the transfer of the Dempster Building to CAST, as described in Section 3.2.2 and in Section 7.8;
- (f) the Arts Program benefits as described in Section 5.4.2.1 and Exhibit H;
- (g) the Youth Development Program benefits, as described in Exhibit C; and
- (h) a One Million Dollar (\$1,000,000) contribution to DRE for capital improvements to and associated technical studies for the San Francisco Old Mint building at the time and as provided in Exhibit D; and
- (i) a Three Hundred Thousand Dollar (\$300,000) contribution to the Planning Department to fund staff time, consultant work and other studies or measures in

furtherance of adopting a Filipino Cultural Heritage District in the vicinity of the Project at the time and as provided in Exhibit D.

Developer shall pay the 5M Community Benefits Fee or complete each of the Community Benefits on or before the dates provided in this Agreement (including the Community Benefits Schedule attached hereto as Exhibit D) and the Approvals. Any payments or property received by the City as part of the Community Benefits shall be used by the City as described in this Agreement. Upon Developer's request, the City shall provide to Developer evidence of the use of the funds by the City consistent with the requirements of this Agreement.

4.2 Conditions to Performance of Community Benefits. Developer's obligation to perform Community Benefits is expressly conditioned upon each and all of the following conditions precedent:

- (a) All Approvals shall have been Finally Granted;
- (b) The City and any applicable Non-City Agency shall have performed or granted any and all of their respective actions, approvals or authorizations and/or issued such permits or licenses required in order to permit Developer to Commence Construction of the Building or Project component to which Community Benefit applies, and same shall have been Finally Granted except to the extent that such actions, approvals or authorizations, or permits or licenses have not been performed or granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such actions, approvals, authorizations or issuances; and
- (c) Developer shall have obtained all Subsequent Approvals necessary to Commence Construction of the applicable Building to which the Community Benefit or Project component applies, and same shall have been Finally Granted, except to the

Agreement. And no change to the Project that is permitted under the 5M SUD 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 Subsequent Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to an Approval or Subsequent 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 Subsequent Approval or the proposed amendment to an Approval or Subsequent Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the 5M SUD, 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 Subsequent Approval or any amendment to an Approval or Subsequent Approval that conflicts with this Agreement.

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

11.5.1 Litigation and Referendum Extension. If any litigation is filed challenging 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), including any challenge to the validity of this Agreement or any of its provisions, or if this Agreement or an Approval is suspended pending the outcome of an electoral vote on a referendum, then the

Term of this Agreement and all Approvals 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, the date of the initial grant of such Approval) 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.

11.5.2 "**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

EXHIBIT B
5M PROJECT
PROJECT DESCRIPTION¹

The Project is a mixed-use development of new construction, rehabilitated and renovated existing buildings, and open space, constituting up to 1,697,600 gross square feet (gsf)² of building space, including up to: 821,300 gsf of residential uses (approximately 690 units), 807,600 gsf of office uses (including active office uses at or below the ground floor), 68,700 gsf of other active ground floor uses (including mezzanine and basement spaces), 59,500 square feet of open space and approximately 463~~331~~ vehicle parking spaces, 429 Class 1 bicycle spaces and 66 Class 2 bicycle spaces. The Project contains up to seven buildings (three new buildings and four retained buildings), with six open space areas and associated streetscape improvements, all as further described in the Design for Development, and below.

1. **Building H-1**³

- Demolition of existing buildings and surface parking lots at 172 Fifth Street, 190 Fifth Street, 910 Howard Street, 912 Howard Street, 918 Howard Street and 924 Howard Street (Assessor's Block/Lot No. 3725/005, 006, 008, 009, 012 & 098) for construction of the following:
 - An up to 617,900 gsf, 395-foot tall 25-story office building with approximately 584,900 gsf of office space above the ground floor, 33,000 square feet of active ground floor and mezzanine space (including 7,100 gsf of retail and 8,600 gsf of office uses, 17,300 square feet of lobby/core and building services space);
 - Up to three subterranean levels of vehicle and bicycle parking and loading, including up to: 254~~122~~ vehicular parking spaces, 6 loading spaces and 104 Class 1 bicycle spaces, and 23 Class 2 spaces;
 - A three-stall off-street freight loading dock on the ground floor, with a combined automobile parking entrance/exit and freight loading entrance from Howard Street and freight loading exit onto Natoma Street;
 - An approximately 11,000 square-foot private terrace on the southwest side of the building at or about the tenth floor; and

¹ Any capitalized term used in this Exhibit that is not defined herein shall have the meaning given to such term in this Agreement.

² Gross square footage excludes subterranean parking and loading, parking and loading ingress and egress, as well as a full mechanical floor for commercial Building H-1. All quantities stated herein are approximate and nothing herein shall be deemed to require maximum site development, unless otherwise noted. Size and location of private open spaces and related elements may be modified and/or relocated during design development in accordance with Approvals or Subsequent Approvals.

³ As more particularly described in Planning Commission Motion No. [--], dated July __, 2015, and any Subsequent Approvals.

- Construction of an up to 1,600 square-foot pedestrian improvement adjacent to Building H-1 along Mary Street.
- Demolition of existing surface parking on 435-39 and 441-45 Minna Street, 44 and 50 Mary Street, and 432-38 and 440 Natoma Street (Assessor's Block 3725, Lots 043- 047, 077), and construction of Mary Court West, approximately 14,600 sf open space;
- Construction and installation of the following streetscape improvements:
 - Removal of two metered vehicle parking spaces on Howard Street adjacent to the Building and replacement with a passenger loading/unloading zone adjacent to the Project on Howard Street, and addition of a metered commercial loading space;
 - Widening the Fifth Street sidewalk between Natoma and Howard Streets from 10 feet to 18 feet, with a 60-foot long, approximately 8-foot deep inset for three commercial loading spaces;
 - Widening the Mary Street sidewalk adjacent to Mary Court West, from 5 to 10 feet;
 - Streetscape improvements to sidewalks adjacent to Mary Court West;
 - Conversion of Mary Street between Minna and Howard Streets to a shared public way;
 - Sidewalk improvements on Howard Street adjacent to the off-site parcel at 198 Fifth Street;
 - Streetscape improvements to sidewalks adjacent to the Natoma, Fifth, Howard and Mary Street building frontages and street trees within an approximately 300-foot long portion of the south Howard Street sidewalk extending west from Fifth Street.

2. Building N-1⁴

- Demolition of a portion of the existing building at 110 Fifth Street (Assessor's Block/Lot No. 3725/097) to provide an approximately 18,000 square foot footprint for construction of the following:
 - An up to 400-unit, 470-foot tall 45-story residential building with approximately 570,500 gsf devoted to residential use, 13,200 square feet of active ground floor uses (composed of 7,300 gsf of active ground floor retail space; 5,900 square feet lobby/core and building services space);
 - Up to three subterranean levels of vehicle and bicycle parking and loading accessible from Minna Street, including up to: 156 vehicle spaces⁵ and 176 Class 1 bicycle spaces, and 24 Class 2 bicycle spaces;

⁴ As more particularly described in Planning Commission Motion No. [--], dated July __, 2015, and any Subsequent Approvals.

⁵ Building N-1 is entitled to use of an additional ~~135~~63 parking spaces, accessory to Building N-1, in the garage of Building H-1

Exhibit D¹**Community Benefit Schedule**

The Developer shall make the 5M Community Benefit Fee and applicable Impact Fee and Exaction payments in the amounts provided for each Building² listed on Schedule 1 determined, as applicable, on the actual square footage of the proposed Building at the time of issuance of the first construction document, provided, however, that where noted certain specified portions shall be paid in advance at the time the Approvals are Finally Granted.

The amounts payable as shown on Schedule 1, when tied to the square footage of a Building, are estimates based upon the anticipated square footage of that Building. The actual ~~square footage amount payable by Developer under the applicable provision of the San Franciscoe Planning and Administrative Codes or this Agreement~~ will be calculated in accordance with Planning Code and Administrative Code, as applicable, at the time of issuance of the relevant construction document. The uses of the Impact Fees and Exactions and Community Benefit Fee are described in the Exhibits to this Agreement and in Schedule 1.

While the Impacts Fees and Exactions will equal the applicable amounts required under the Planning and Administrative Codes, this Exhibit D reflects that the specified fees will be used by the City and allocated under this Agreement in a manner designed to first advance funds

¹ Any capitalized term used in this Exhibit not defined herein shall have the meaning given in this Agreement.

² "Building" as is shown on the Project Description, Exhibit B to this Agreement

and the contribution of land for affordable housing, and thereafter to fund transit and transportation but without reducing the overall amount to be used for transit and transportation.

The parties currently anticipate that the H-1 Building will start construction before the N-1 Building. If the N-1 Building starts construction before the H-1 Building, the Planning Director may, in consultation with the City's Controller, use the N-1 Building funds to first accomplish the uses specified in Schedule 1 for the H-1 Building, including the payment for the Eddy & Taylor Street project. Upon any such adjustment in the use of funds from the N-1 Building, a corresponding change will be made in the use of funds for the H-1 Building so that the overall community benefit funding remains the same.

In addition, in light of the fact that the payment amounts shown on Schedule 1 are estimates, the Planning Director, in consultation with the City Controller, may adjust dollar amounts in the line items for the use of funds as may be needed in order to achieve the overall community benefits reflected in this Agreement by increasing or decreasing any line item amount by up to 10%. For any increase or decrease of more than 10%, the Planning Director must get the prior approval of the Planning Commission. All Developer payments under Schedule 1 shall be made to the City and County of San Francisco, and delivered to the Planning Director at the address for notices set forth in this Agreement. The Planning Director, in consultation with the OEWD Director and the Controller, shall then direct funds to the appropriate City Agency accounts consistent with this Agreement.

EXHIBIT G

Transportation Program

All initially capitalized terms shall have the meaning given in the Definitions section of this Agreement, unless separately defined in this Exhibit.

1. Improvements.

Developer shall construct the street and sidewalk improvements (the "**Improvements**") described in this Section 1 below. The Parties agree to cooperate with one another to complete the Improvements as and when contemplated by this Exhibit, and to take all other actions or proceedings reasonably necessary or appropriate to ensure that the reviews, Subsequent Approvals, and inspections required to complete such Improvements are provided without undue delay and in accordance with this Agreement, provided that nothing in this Exhibit obligates City to spend any sums of money or to incur any costs other than administrative costs incurred in the ordinary course of business, in connection therewith.

Developer shall complete the Improvements described below and depicted on Schedule 1 hereto, each as may be further described in and consistent with the Design for Development, as provided in the respective Building Conditional Use authorization, prior to issuance of a Certificate of Occupancy for each respective Building identified below:

Building	Improvements
Building H-1	<p>Widen the adjacent Fifth Street sidewalk, between Natoma and Howard Streets, from 10 feet to 18 feet (with a 60-foot long, approximately 8-foot deep inset for three commercial loading spaces).</p> <p>Widen Mary Street sidewalk adjacent to Mary Court West, from 5 feet to 10 feet, and install associated streetscape improvements to all sidewalks adjacent to Mary Court West.</p> <p>Convert Mary Street between Minna and Howard Streets to a shared public way.</p> <p>Construct and install the privately owned publicly accessible approximately 1,600-square-foot pedestrian improvement area adjacent to Building H-1 along Mary Street.</p> <p>Construct and install streetscape and other improvements on</p>

2. Transit Fee and TSP Contribution.

Developer shall pay a Transit Impact Development Fee ("**Transit Fee**") for use and allocation as described in the Community Benefits Schedule, Exhibit D to the Agreement. Upon receipt, the SFMTA shall have the right to expend the Transit Fee in its sole discretion in accordance with customary SFMTA practice.

Developer shall pay to SFMTA the portion of the 5M Community Benefit Fee at the time and in the manner described in the Community Benefits Schedule, Exhibit D to the Agreement (the "**TSP Contribution**"). The TSP Contribution shall be used by SFMTA to contribute to SFMTA's costs to construct and install pedestrian safety improvements, including but not limited to sidewalks, cross-walks, signal timing and left/right turn pockets, as further described below in this Section 2 (the "**TSP Improvements**"). SFMTA shall be responsible for all additional costs associated with the design, permitting, construction, installation, maintenance and operation of the TSP Improvements beyond the amount of the TSP Contribution. SFMTA's use of the TSP Contributions and the timing of its construction of the TSP Improvements shall be prioritized in the following order:

2.1 Mission Street Mid Block Crossing. Mid-block signalized crosswalk extending north across Mission Street between the North Mary Pedestrian Alley and the San Francisco Mint building, which is estimated to be \$400,000.

2.2 SoMa Street Streetscape, Pedestrian Safety and Related Improvements. SFMTA shall use the remaining TSP Contributions for the purpose of designing and constructing streetscape, pedestrian safety, pedestrian realm and related improvements within the impact area identified on Schedule 2 hereto. Priority will be given to improvements that address pedestrian and bicycle safety improvements on corridors adjacent to the Project Site, particularly those that are a part of Vision Zero SF (i.e., the high injury corridor analysis conducted by SFDPH in collaboration with SFMTA on behalf of the City's Vision Zero Task Force).

Without limiting the foregoing, SFMTA will contribute an amount from the TSP Contribution, not to exceed \$85,000, for a study that reviews bicycle and pedestrian safety and network connectivity priorities for the 5th Street corridor between Market and Harrison Streets and the Howard Street corridor between 4th and 7th Streets. This study will prioritize consistency with Vision Zero SF, the SFMTA's Bicycle Strategy, and the community priorities incorporated into Planning Department's Central Corridor study, each as may be revised as and when funding becomes available. SFMTA shall lead the scoping, planning and engineering matters for the study with the intent of delivering recommendations that are defined sufficiently to submit to the Planning Department for environmental review, as necessary, under CEQA. Nothing in this section is intended to limit SFMTA's right to provide additional funding, programs or to conduct additional studies related to the above matters.

3. Fifth Street East Sidewalk and Related Improvements.

As further described in and in accordance with the requirements of the MMRP, Exhibit J to the Agreement, Developer shall fund the design and construction of the following improvements:

Exhibit H
Arts Program

Developer shall make contributions and undertake activities to support facilities and programs for the arts and culture as set forth below.¹ -The Arts Capital Funds, Arts Programming Funds and Non-Profit Arts Facilities Funds shall be paid on or before the dates specified in Exhibit D for the uses described in this Exhibit.

A. Dempster Building Transfer.

Developer shall contribute the Dempster Building as and when provided in this Agreement, to the Community Arts and Stabilization Trust ("CAST") or to another ~~nonprofit~~non-profit organization, as set forth in Section 7.8 to this Agreement, to be used for a mix of organizations that provide programs and services to benefit the community, with a focus on underserved communities in the vicinity of the Project Site, and emphasizing non-profit community-based arts and culture-focused organizations, as well as other community-serving uses such as youth programming and workforce development.

B. Public Art Fee.

Developer shall make Public Art Fee contributions in accordance with Section 5.4.2.1 of this Agreement. -As provided therein, (i) sixty percent (60%) of the ~~of the~~ Public Art Fee shall be allocated to and used for capital expenditure ("Arts Capital Funds"), and (ii) forty percent (40%) shall be used for public art and cultural programming ("Arts Programming Funds"), all as described in Section 7.8 of this Agreement.- In addition to the Public Art Fee contributions, Developer shall contribute Six Hundred Thousand Dollars (\$600,000) for the Non-Profit Arts Facilities Fund, as described below. -The Public Art Fee and Non-Profit Arts Facilities Fund contributions shall be paid to the City Treasurer, to be distributed to the San Francisco Arts

¹ Any capitalized term used in this Exhibit that is not defined herein shall have the meaning given to such term in this Agreement.

Commission (“Arts Commission”) at the time and allocated as provided in Exhibit D to this Agreement for the uses set forth below.

1. Arts Capital Funds. -The Arts Capital Funds shall be distributed by the Arts Commission to CAST or to another ~~nonprofit~~non-profit organization, as set forth in Section 7.8 to this Agreement, to be used for the payment of capital costs, including, without limitation, the costs of interior and exterior design, engineering, and construction, relating to the redevelopment of the Dempster Building for the uses set forth in Section A above.

2. Arts Programming Funds.- The Arts Programming Funds shall be distributed by the Arts Commission for use on the Project Site in accordance with its standard procedures and Planning Code Section 429 and Administrative Code Section 10-100-29 (the “Public Artwork Trust Fund”), as the same are modified by this Exhibit H.- For purposes of this Section 2, references to the Arts Commission shall be to the Arts Commission acting by and through its Director of Cultural Affairs.

a. ~~Arts Program Development, Oversight and Curation Funds.~~ Ten percent (10%) of the ~~Arts Programming Funds shall be distributed by the Arts Commission to CAST or such other non-profit entity designated pursuant to Section 7.8 that is operating the Dempster Building.~~ Such funds shall be paid in the amount and at the time specified in Exhibit D and distributed annually in equal installments over an approximately five year period. ~~Such funds shall be used to oversee, coordinate and curate public art and cultural programming in the publicly accessible open spaces within the Project Site, working in collaboration with the grantees of Arts Programming Funds pursuant to Section b. below and the Director of Cultural Affairs.~~

b. ~~Arts Program Competitive Grant Funds.~~ Ninety percent (90%) of the ~~The~~ Arts Programming Funds shall be distributed by the San Francisco Arts Commission to San Francisco-based non-profit arts entities and artists through a competitive grant process. -Such funds shall be paid in the amount and at the time specified in Exhibit D and distributed annually in equal installments over an approximately five-year period.- Such funds shall be used for

public art and cultural programming in the publicly accessible open spaces within the Project Site. ~~Qualifying fund uses include:~~ (i) physical structures, exhibits or artwork, as long as the purpose is to represent the cultural history of the community and/or serve as an interactive art installation that engages the community; (ii) arts events, cultural events and performances that are open and accessible to the public (with a focus on events that serve the immediate neighborhood) and that include options for free and/or reduced price admission; and (iii) participatory, ~~place-keeping~~ and social practice projects or other public programs that use social engagement as a medium. ~~Consideration~~ Funding consideration priority will be given to arts organizations with a demonstrated track record of leveraging funds with matching grants or other sources and/or creating partnerships with local, individual artists and community-based organizations who have a long-established presence in the South of Market (“SoMa”) area, are deeply rooted within the neighborhood, and reflect and/or support high-risk and/or historically underserved populations.

3. Non-Profit Arts Facilities Funds. The Non-Profit Arts Facilities Funds shall be paid at the time specified in Exhibit D and distributed by the Arts Commission through a competitive process ~~either as a lump sum or in installments over a~~ period of up to five year period ~~years to a non-profit entity or non-profit entities for the purpose of:~~ (i) assisting San Francisco-based non-profit entities providing arts and cultural programs with financial planning, space planning, funding sources and other technical advice associated with locating, securing and improving appropriate space for arts and cultural ~~spaces-activities;~~ or (ii) providing direct assistance on such facilities-related issues. Consideration will be given to organizations with a demonstrated track record of ~~either advising non-profits arts and cultural institutions in the SoMa area on facilities-related issues, including working with high risk and/or disadvantaged populations, or providing direct services on facilities-related issues in the SoMa area.~~

4. Accounting. Developer shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in good faith in accordance with the provisions of this Arts Program. ~~The Public Art Fee and Non-Profit Arts Facilities Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the~~

City shall maintain records as part of the City's City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available to Developer upon request.

The failure of any recipient to use funds as required by this Exhibit H shall not be a City or Developer breach of the Agreement. -The City shall have no obligation to make any payment or provide any funds except for what it has received from the Developer as set forth in this Exhibit H, and Developer shall have no obligation to make any payment or provide any funds except as set forth in this Exhibit- H.

5. Board Authorization.- By approving the Agreement, the Board of Supervisors authorizes the City to accept and expend the Public Art Fee and Non-Profit Arts Facilities Funds paid by the Developer as set forth in this Exhibit H. -The Board of Supervisors also agrees that any interest earned on any Public Art Fee and Non-Profit Arts Facilities Funds held by the City shall remain in designated accounts for arts purposes consistent with this Exhibit H and shall not be transferred to the City's City's general fund.