File No. 190682 Committee Item No. 8
Board Item No. 24

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee **Date** December 9, 2019

Board of Supervisors Meeting **Date** DECEMBER 17, 2019

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Completed by: Erica Major **Date** December 6, 2019
Completed by: Erica Major **Date** DECEMBER 12, 2019

[Development Agreement - KR Flower Mart, LLC - Flower Mart - 5th and Brannan Streets]

Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the development of an approximately 6.5-acre site located at 5th Street and Brannan Street, with various public benefits including a new on-site or off-site wholesale flower market; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving the receipt and expenditure of funds for an off-site new wholesale flower market as set forth in the Development Agreement, as applicable; approving the development impact fees for the project and waiving certain Planning Code fees and requirements for a temporary flower market; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; and ratifying certain actions taken in connection therewith, as defined herein.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Project Findings.

The Board of Supervisors makes the following findings:

(a) California Government Code Section 65864 et seq. authorizes any city, county,

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or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.

(b) Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth certain procedures for the processing and approval of development agreements in the City and County of San Francisco (the "City").

(c) KR Flower Mart, LLC, a Delaware limited liability company ("Developer") owns and operates an approximately 6.5-acre site generally along Brannan Street between Fifth and Sixth Streets currently composed of 141,992 square feet of flower market use, along with approximately 4,900 square feet of retail use, and 45,549 square feet of vacant PDR spaces, and surface parking lot areas (the "Project Site").

(d) On June 3, 2019, Developer filed an application with the City's Planning Department for approval of a development agreement relating to the Project Site (the "Development Agreement") under Chapter 56. A copy of the Development Agreement is on file with the Clerk of the Board in File No. 190682. Developer also filed applications with the Department for certain activities described in Exhibit B.1 (the "Flower Mart On-Site Project") and Exhibit B.2 (the "Project Variant") to the Development Agreement (collectively, the "Project").

(e) The Flower Mart On-Site Project is a large multi-phase and mixed-use development that includes office, retail, wholesale, privately-owned public open space, parking, and related uses. Specifically, the Project includes approximately 2,032,165 gross square feet of office uses, 83,459 square feet of retail space (including 10,000 rentable square feet of flower retail space), and a new wholesale flower market consisting of 115,000 rentable square feet of flower vendor space, 769 vehicle parking spaces, 30 loading spaces, 410 Class 1 bicycle parking spaces, 86 Class 2 bicycle parking spaces, and 40,655 square feet of on-site and off-site privately-owned public open space, all as more particularly

described in the Development Agreement. The Project Variant is generally the same as the Project except that the permanent new wholesale flower market would be built at an alternative, off site location. Accordingly, the Project Variant includes approximately 2,061,380 gross square feet of office uses, 90,976 square feet of retail space, 22,690 square feet of child care space (including dedicated outdoor activity area), 632 vehicle parking spaces, 9 loading spaces, 516 Class 1 bicycle parking spaces, and 92 Class 2 bicycle parking spaces (together with the off-site new wholesale flower market), all as more particularly described in the Development Agreement.

(f) The Development Agreement includes a process for the selection of the Flower Mart On-Site Project versus the Project Variant, which begins with an election by the San Francisco Flower Market Tenants' Association (the "Tenant Association"), with the ultimate decision made by the City to ensure that any location requested by the Tenant Association is viable. If the City elects the Flower Mart On-Site Project, Developer will, at no cost to the City or the flower vendors, relocate the vendors to a temporary off-site location, build the new flower market on site, and then move vendors back to the Project Site when the new flower market is completed. If the City selects the Project Variant, Developer will, at no cost to the City or the flower vendors, construct the new off-site flower market and move the vendors to the ~~pay all of the predevelopment costs for~~ new off-site flower market~~, and will subsidize the construction of the new building off-site~~ in accordance with criteria specified in ~~a payment formula attached to~~ the Development Agreement. ~~The payment formula will result in a upfront payment amount (the "New Market Payment"), payable to the City, that is designed to ensure that the new flower market can be built at the off-site location, based on the actual building design or alternatively on specific criteria described in the Development Agreement, using only set flower vendor rents, a Developer rent subsidy, a third party loan, and such additional Developer subsidy as needed to support the third party loan. As Developer will be required to~~

~~pay some or all of standard owner equity at the new location without the benefit of owning the building, this equity portion of the Developer subsidy will be reimbursed without interest, as a subordinated payment made by the building owner after debt and operating expenses are paid, to the extent funds are available.~~

(g) The commitments made to the flower vendors, including the significant rent subsidies through the date of completion of the new flower market and continuing for 15 years thereafter, are also contained in a tri-party agreement between Developer, the San Francisco Flower Mart LLC, and the San Francisco Flower Market Tenants' Association, as amended (the "Tri-Party Agreement").

(h) In addition to the construction of a new wholesale flower market,~~flower market commitments and the~~ significant jobs, housing, urban revitalization, and economic benefits to the City from the Project, the City has determined that development of the Project under the Development Agreement will provide additional benefits to the public that could not be obtained through application of existing City ordinances, regulations, and policies. Additional public benefits include ~~the dedication of a minimum 14,000 square foot affordable housing site within the boundaries of the Central SoMa, Eastern SoMa or Western SoMa Area Plans, with no developer impact fee credit for such dedication,~~ *protection of the San Francisco wholesale flower market as a vital and historic PDR use,* completion of a subsidized child care center if the Project Variant is built, construction of a San Francisco Filipino Cultural Heritage District gateway marker, additional contributions of $5,100,000 to an affordable housing developer for costs related to the Sunnydale Hub project and $2,000,000 to support street cleaning efforts in the South of Market Area, open space, community space, and workforce commitments, and transportation and other public improvements, all as described in the Development Agreement. The Development Agreement will eliminate uncertainty in the City's land use planning for the Project and secure orderly development of the Project Site.

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(i) The Project is anticipated to generate an annual average of approximately 8,050 construction jobs, 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, and approximately $175.2 million in direct, one-time, construction-related revenue to the City, including ~~$166~~ 211 million in development impact fees and $9.2 million in gross receipts and sales tax revenue.

(j) Concurrently with this Ordinance, the Board is taking a number of actions in furtherance of the Project, as generally described in the Development Agreement, including Exhibit K to the Development Agreement.

Section 2. CEQA Findings.

On July 3, 2019, the Environmental Review Officer ("ERO") issued a Community Plan Exemption ("CPE") and Addendum for the Project, Project Variant, and the Temporary Site pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA"). Copies of the CPE and Addendum are on file with the Clerk of the Board of Supervisors in File No. 190681. On July 18, 2019, by Motion No. 20484, the Planning Commission adopted findings pursuant to CEQA and a Mitigation Monitoring and Reporting Program ("MMRP"). This Motion is on file with the Clerk of the Board of Supervisors in File No. 190681. This Board has reviewed the CPE, Addendum, and related documents, and adopts and incorporates by reference as though fully set forth herein the CEQA Findings and the MMRP.

Section 3. General Plan and Planning Code Section 101.1 (b) Findings.

(a) The Board of Supervisors finds that the Development Agreement will serve the public necessity, convenience, and general welfare for the reasons set forth in Planning Commission Resolution No. 20486 and incorporates those reasons herein by reference.

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(b) The Board of Supervisors finds that the Development Agreement is in conformity with the General Plan, as proposed to be amended and when effective, and the eight priority policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission Resolution No. 20486. The Board hereby adopts the findings set forth in Planning Commission Resolution No. 20486 and incorporates those findings herein by reference.

Section 4. Development Agreement.

(a) The Board of Supervisors approves all of the terms and conditions of the Development Agreement, in substantially the form on file with the Clerk of the Board of Supervisors in File No. 190682.

(b) The Board of Supervisors approves and authorizes the execution, delivery, and performance by the City of the Development Agreement as follows: (i) the Director of Planning and (other City officials listed thereon) are authorized to execute and deliver the Development Agreement and consents thereto, and (ii) the Director of Planning and other applicable City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with the terms of the Development Agreement. The Director of Planning, at his or her discretion and in consultation with the City Attorney, is authorized to enter into any additions, amendments, or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or materially decrease the benefits to the City as provided in the Development Agreement.

~~(c) The Board of Supervisors authorizes the Controller to accept the New Market Payment and any other payments made by the Developer under the Development Agreement. The City shall hold the New Market Payment for costs relating to the construction~~

~~of the new flower market under the Project Variant. Any payments may be commingled with other funds of the City for purposes of investment and safekeeping, but the City's Controller shall maintain records as part of the City's accounting system to account for all the expenditures and the remaining balance.~~

~~(d) The Board of Supervisors authorizes the City's Controller to make payments, using the funds received from Developer, to the Tenant Association or the Alternative Landlord or their contractors and agents, consistent with the Development Agreement. The City waives or overrides any ordinances or processes that would otherwise prevent the City from making the payments contemplated by this Agreement.~~

Section 5. Development Impact Fees

For the Project, the Board of Supervisors approves the development impacts fees and the use of the fees as set forth in the Development Agreement, and waives any inconsistent provision in Planning Code Article 4. For the construction of a temporary flower market, the Board of Supervisors waives all development impact fee requirements under Planning Code Article 4.

Section 6. City Administrative Code Conformity.

The Development Agreement shall prevail in the event of any conflict between the Development Agreement and Chapter 56, and without limiting the generality of the foregoing clause, for purposes of the Development Agreement only, the provisions of Chapter 56 are waived or its provisions deemed satisfied as follows:

(a) KR Flower Mart, LLC shall constitute a permitted "Applicant/Developer" for purposes of Chapter 56, Section 56.3(b).

(b) The Project comprises approximately 6.5 acres and is the type of large multi-phase and/or mixed-use development contemplated by the City Administrative Code and therefore is satisfies the provisions of Chapter 56, Section 56.3(g).

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(c) The provisions of the Development Agreement, including the attached Workforce Agreement, apply and satisfy the requirements of City Administrative Code Chapter 14B, Section 14B.20 and Chapter 56, Section 56.7(c).

(d) The provisions of the Development Agreement regarding any amendment or termination, including those relating to "Material Change," shall apply in lieu of the provisions of Chapter 56, Section 56.15.

(e) The provisions of Chapter 56, Section 56.20 have been satisfied by the Memorandum of Understanding between Developer and the Mayor's Office of Economic and Workforce Development for the reimbursement of City costs, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 190682.

Section 7. Chapter 56 Waiver; Ratification.

(a) In connection with the Development Agreement, the Board of Supervisors finds that the requirements of Chapter 56, as modified hereby, have been substantially complied with and waives any procedural or other requirements of Chapter 56 if and to the extent that they have not been strictly complied with.

(b) All actions taken by City officials in preparing and submitting the Development Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this Ordinance.

Section 8. Effective and Operative Date.

This ordinance shall become effective 30 days from the date of passage. This Ordinance shall become operative only on (and no rights or duties are affected until) the later of (a) 30 days from the date of its passage, or (b) the date that Ordinance No. _____

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has become effective. A copy of said Ordinance is on file with the Clerk of the Board of Supervisors in File No. 190681.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney
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FILE NO. 190682

REVISED LEGISLATIVE DIGEST

[Development Agreement - KR Flower Mart, LLC - Flower Mart Project - 5th and Brannan Street]

Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the development of an approximately 6.5-acre site located at Fifth and Brannan Streets, with various public benefits including a new on-site or off-site wholesale flower market; making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving the development impact fees for the Project and waiving certain Planning Code fees and requirements for a temporary flower market; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; and ratifying certain actions taken in connection therewith, as defined herein.

Existing Law

California Government Code section 65864 *et seq.* (the Development Agreement Statute") and San Francisco Administrative Code Chapter 56 ("Chapter 56") authorize the City to enter into a development agreement regarding the development of real property.

Background Information

This ordinance would approve a Development Agreement between the City and KR Flower Mart, LLC for the development of a mixed use development on a 6.5-acre site located at Fifth and Brannan Streets, that will include approximately 2,032,165 gross square feet of office uses, 83,459 square feet of retail space (including 10,000 rentable square feet of flower retail space), and a new wholesale flower market consisting of 115,000 rentable square feet of flower vendor space. The project variant is generally the same, except that the permanent new wholesale flower market would be built at an alternative, off site location. The process for determining whether the flower market will be built on site or off site is described in the Development Agreement. This Ordinance also would also adopt environmental findings.

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12-8-19 / CAO

(CLEAN)

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

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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 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 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 no less than 34.5 years or 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 "**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.

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

1.129 "**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.

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

1.131 "**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 the 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 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) in order to create a permanent wholesale flower market at an Alternative Permanent Site by Developer (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 or 35 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.

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 60-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 nine (9) 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 60-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 appeal in the event that the Permanent Off-Site Entitlement Approvals are appealed, up to 120 days; (iii) an administrative appeal or judicial challenge is filed by Tenant Association, SFFM, or any vendor at the Existing Flower Market challenging the Permanent Off-Site Approvals, subject to a 60-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 in an "as is" condition ("**As Is Relocation Option**"), which (unless SFFM elects to require Developer to construct the Permanent Off-Site Facility as described in Section 3.8.1(c) below) 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, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco. In the cases described in Section 3.8.1 (i), (ii), or (iv) above and if SFFM accepts the As Is Relocation Option pursuant to this Section 3.8.1(c), 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, 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, SFFM, or any vendor at the Existing Flower Market, 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 the 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 the 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 Ten Million Dollars ($10,000,000),

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, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco.

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 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, 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 and the Permanent Off-Site Facility. The provisions of this Section 3.11 shall survive the expiration of this Agreement.

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.

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 per 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 at the Blocks Building, 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 support street cleaning efforts in SoMa.

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 Finally 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 Finally 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 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). 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.

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. Notwithstanding the foregoing, if the City has not waived Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000) 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 issued 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 issued 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 issued 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 issued prior to the Relocation Date, the date of the initial grant of such Approval, Relocation Site Approval, or Permanent Off-Site Approval issued 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 as to form:

DENNIS J. HERRERA, City Attorney

By:

Elizabeth A. Dietrich
Deputy City Attorney

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: _____

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 _____

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

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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 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 ~~a Payment~~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 ~~at the Permanent Site~~ by the time Developer initially moves the flower market vendors from the Project Site. These commitments ~~were also made~~ 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 ~~between~~among Developer, Tenant Association, and ~~San Francisco Flower Mart LLC~~SFFM, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**"~~), as further described in Exhibit D.~~").

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 ~~as~~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 ~~with no fee credit~~, 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 ~~[INSERT]~~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. ~~[XX]~~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 _____, ~~2019~~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:

~~2.~~1.1 **"Addendum"** has the meaning set forth in Recital J.

~~3.~~1.2 ~~"(~~"**Administrative Code**"~~)~~" means the San Francisco Administrative Code.

~~4.~~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.

~~5.~~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.

~~1.5~~1.7 "**Annual Review Date**~~"~~" has the meaning set forth in Section 9.1.

~~1.6~~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).

~~1.7~~1.9 ~~"~~"**Approvals**~~"~~" means the City approvals and entitlements listed on Exhibit K.

~~1.8~~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).

~~1.9~~1.12"**Associated Community Benefits**" is defined in Section 45.1.

~~1.10~~1.13 "**Bayview FEIR**" shall have the meaning set forth in Recital J.

~~1.11~~1.14 ~~"~~"**Board of Supervisors**~~"~~" or ~~"~~"**Board**~~"~~" means the Board of Supervisors of the City and County of San Francisco.

~~1.12~~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.

~~1.13~~1.16 **"Central SOMA FEIR"** shall have the meaning set forth in Recital J.

~~1.14~~1.17 ~~"~~**Central SOMA Plan**~~"~~ shall have the meaning set forth in Recital ~~H~~.

~~1.15~~1.18 ~~"~~**CEQA**~~"~~ has the meaning set forth in Recital H.

~~1.16~~1.19 **"CEQA Findings"** means the CEQA findings made by the Planning Commission and the Board of Supervisors in approving this Agreement.

~~1.17~~1.20 ~~"~~**CEQA Guidelines**~~"~~ has the meaning set forth in Recital H.

~~1.18~~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.

~~1.19~~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.

~~1.20~~1.23 ~~"~~**Chapter 56**~~"~~ has the meaning set forth in Recital F.

~~1.21~~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.

~~1.22~~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).

~~1.23~~1.26 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

~~1.24~~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.

~~1.25~~1.28 "**City Parties**" has the meaning set forth in Section 5.6.

~~1.26~~1.29 "**City Report**" has the meaning set forth in Section 9.2.2.

~~1.27~~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.

~~1.28~~1.31 "**CMA**" is defined in Section 13.1.

~~1.29~~1.32 "**Commence Construction**" means the commencement of physical construction of the applicable Building foundation on the Project Site.

~~1.30~~1.33 "**Community Benefits**" has the meaning set forth in Section 5.1.

~~1.31~~1.34 "**Community Benefits Program**" has the meaning set forth in Section 5.1.

~~1.32~~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.

~~1.33~~1.37 "**Default**" has the meaning set forth in Section 10.3.

~~1.34~~1.38 "**Design Guidelines**" means the Key Development Site Guidelines adopted as part of the Central SOMA Plan.

~~1.35~~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.

~~1.36~~1.40 "**Development Agreement Statute**" has the meaning set forth in Recital F, as in effect as of the Effective Date.

~~1.37~~1.41 "**DPW**" means the San Francisco Department of Public Works.

~~1.38~~1.42 "**Effective Date**" has the meaning set forth in Section 2.1.

~~1.39~~1.43 ~~"~~"**Enacting Ordinance**~~"~~" has the meaning set forth in Recital M.

~~1.40~~1.44 ~~"~~"**Excusable Delay**~~"~~" has the meaning set forth in Section 12.5.2.

~~1.41~~1.45 ~~"~~"**Exercise Notice**~~"~~" has the meaning set forth in Section 3.~~3~~4.

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

~~1.42~~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.

~~1.43~~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.

~~1.44~~1.50 ~~"~~"**Extended Alternative Option Period**~~"~~" has the meaning set forth in Section 3.4.

~~1.45~~1.51 ~~"~~"**Federal or State Law Exception**~~"~~" has the meaning set forth in Section 6.~~8~~10.1.

~~46.1 "**Finally 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 the entry of a final judgment, order or ruling upholding 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.~~

~~1.47~~1.52 "**Flower Market Obligations**" means Developer's obligations described in Article 3 and in ~~subsections~~subsection 5.1.1.

~~1.48~~1.53 ~~"~~"**Foreclosed Property**~~"~~" is defined in Section 11.5.

~~1.49~~1.54 ~~"~~"**General Plan Consistency Findings**~~"~~" has the meaning set forth in Recital K.

~~1.50~~1.55 ~~"~~"**Gross Floor Area**~~"~~" has the meaning set forth in Planning Code Section 102 as of the Effective Date.

~~1.51~~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.

~~1.52~~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).

~~1.53~~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.

~~1.54~~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.

~~1.55~~1.61 ~~"~~"**Law Adverse to City**~~"~~" is defined in Section 6.~~8~~10.4.

~~1.56~~1.62 ~~"~~"**Law Adverse to Developer**~~"~~" is defined in Section 6.~~8~~10.4.

~~1.57~~1.63 ~~"~~"**Litigation Extension**~~"~~" has the meaning set forth in Section 12.5.1.

~~57.1 "**Loan Commitment**" means the loan commitment made by a bona fide, third party institutional lender to Alternate Landlord to provide the Debt for the Permanent Facility in accordance with the terms of this Agreement. The Loan Commitment will be subject to the approval of the City and Developer for consistency with this Agreement.~~

~~1.59~~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.

~~1.60~~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 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.

~~1.61~~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.

~~1.62~~1.68 "**MMRP**" means that certain mitigation monitoring and reporting program attached hereto as Exhibit L.

~~1.63~~1.69 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site~~, including mezzanine financing,~~ or the Alternative Permanent Site to secure an obligation made by the ~~applicable~~ property owner or holder of a leasehold interest.

~~1.64~~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.

~~1.65~~1.71 "**Municipal Code**" means the San Francisco Municipal Code.

~~1.66~~1.72 "**New City Laws**" has the meaning set forth in Section 6.7.

~~65.1 "New Market Payment" has the meaning set forth in Section 3.6.4.~~

~~1.68~~1.73 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market ~~to be construction~~(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.

~~1.69~~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.

~~1.70~~1.75 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

~~1.71~~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.

~~69.1 "**Option Period**" has the meaning set forth in Section 3.3.~~

~~1.73~~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.

~~70.1 "**Payment Notice**" has the meaning set forth in Section 3.4.~~

~~70.2 "**Payment Option**" has the meaning set forth in Section 3.6.~~

1.78 ~~"**Permanent**~~ **"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.

~~1.76~~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 ~~Payment~~Permanent Off-Site Option is exercised~~.~~, as more particularly set forth in Section 3.7.

1.82 "**Permanent ~~Interest Free Loan~~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 no less than 34.5 years or 35 years, as approved by the City, after the relocation of the Vendors.

~~1.77~~1.83 "**Permanent Off-Site Notice**" has the meaning set forth in ~~Exhibit F~~ Section 3.3.

~~72.1 "Permanent KRC Contribution" has~~**Off-Site Option**" means an option whereby in lieu of a New Wholesale Flower Market at the ~~meaning set forth in Exhibit F 3.~~

~~1.79~~1.84 "Project Site, a Permanent ~~Lease" means~~ Off-Site Facility is constructed at the ~~lease or agreement between Alternate Landlord and the Tenant Association, and/or its members, for the construction and use of the~~Alternative Permanent ~~Facility, for not less than 15 years, that meets the requirements of this Agreement. The~~ Site and leased pursuant to the Permanent ~~Lease will be subject to the approval of the City and Developer for consistency with this Agreement. The Parties will calculate the New Market Payment based on the terms of the Permanent Lease, as either set forth in the actual document or in a signed letter of intent~~Off-Site Master Lease.

~~73.1 "Permanent Site" has the meaning set forth in Section 3.6.1.~~

~~1.81~~1.85 "**Phase**" means either Phase 1(a), Phase 1(b) or Phase 1(c), as applicable.

~~1.82~~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 ~~Payment~~the Stay Option is ~~not~~ 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 ~~the~~ Developer's relocation program in accordance with the Tri-Party Agreement.

~~1.83~~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.

~~1.84~~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.

~~1.85~~1.89 ~~"~~"**Planning Code**~~"~~" means the San Francisco Planning Code.

~~1.86~~1.90 ~~"~~"**Planning Commission**~~"~~" means the Planning Commission of the City and County of San Francisco.

~~1.87~~1.91 ~~"~~"**Planning Department**~~"~~" means the Planning Department of the City and County of San Francisco.

~~1.88~~1.92 ~~"~~"**Planning Director**~~"~~" means the Director of Planning of the City and County of San Francisco.

~~1.89~~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 ~~Developer~~owner or master lessor thereof at the New Wholesale Flower Market.

~~1.90~~1.94 ~~"~~"**Post-Development Sublease**~~"~~" means a lease agreement at the New Wholesale Flower Market between ~~the~~ Developer or the master lessor of the New Wholesale Flower Market and each Post-Development Subtenant.

~~83.1 "**Pre-Development Costs**" means the Tenant Association's and its~~

~~affiliates' documented third party costs of negotiating exhibits to this Agreement, the amendment to the Tri-Party Agreement, and the long-term lease for the Permanent Site, if applicable, and all investigation, design, feasibility and other predevelopment costs relating to the Stay Option and the Payment Option, including the completion of design and construction documents for the Permanent Facility, permitting and entitlement costs, and all fees and costs of completing the Permanent Facility other than construction costs, all as approved by the City as set forth in this Agreement.~~

~~1.92~~1.95 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who ~~pursuant to~~, in accordance with the terms~~, and after the execution,~~ of the Tri-Party Agreement (and the Pre-Development Lease defined therein), entered into a ~~lease agreement~~Pre-Development Sublease for space at the ~~Project~~ 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 ~~prior to the construction of the Project and the New Wholesale Flower Market.~~ Facility under the Permanent Off-Site Option.

~~1.93~~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.

~~1.94~~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.

~~1.95~~1.98 ~~"~~"**Project Open Space**~~"~~" means the privately owned, publicly accessible open space described in Exhibit I.

~~1.96~~1.99 ~~"~~"**Project Site**~~"~~" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

~~1.97~~1.100 **"Project Variant"** means the mixed use development project described in Recital C and Exhibit B.2 and the Approvals.

~~1.98~~1.101 ~~"~~"**Public Health and Safety Exception**~~"~~" has the meaning set forth in Section 6.~~11~~10.1.

~~1.99~~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~~, repaving of~~ 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.

~~91.1 "Relocation Matters" has the meaning set forth in Section 3.6.2.~~

~~1.101~~1.104 ~~"Second Payment~~"~~" has the meaning set forth in Section 3.~~6.~~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.

~~1.102~~1.107 "**SFFD**" means the San Francisco Fire Department.

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

~~1.103~~1.109 "**SFMTA**~~"~~" means the San Francisco Municipal Transportation Agency.

~~1.104~~1.110 ~~"~~"**SFPUC**~~"~~" means the San Francisco Public Utilities Commission.

~~1.105~~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.

~~1.106~~1.112 ~~"~~"**Stay Notice**~~"~~" has the meaning set forth in Section 3.43.

~~1.107~~1.113 "**Stay Option**" ~~has~~means Developer construction of a New Wholesale Flower Market at the ~~meaning set forth in Section 3.5~~Project Site.

~~1.108~~1.114 ~~"~~ "**Subdivision Code**~~"~~" means the San Francisco Subdivision Code.

~~1.109~~1.115 ~~"~~"**Subdivision Map Act**~~"~~" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

~~1.1101~~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.

~~1.1111~~1.117 **"Temporary Relocation Site"** means ~~the~~a Viable site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Relocation Facility. ~~The~~ In the event the Stay Option is exercised, the Temporary Relocation Site will be at 2000 Marin ~~Street, which is the pre-approved~~so long as no other mutually agreeable Viable temporary site ~~per the Tri-Party Agreement, unless an alternative location is Viable~~selected by the Parties and ~~approved by~~ Developer~~, the City and the Tenant Association. If~~ has entered into an Interim Lease for 2000 Marin ~~is not available because the SFPUC does not yet own the property by October 30, 2019, the City and Developer may agree upon an alternative site as the Temporary Site provided that (a) the site will include not less than 115,000 square feet of occupiable space [or not less than 100,000 square feet if the City determines that the site it can properly accommodate all Existing Subtenants and Pre-Development Subtenants that wish to relocate there], (b) the site will accommodate the Existing Subtenants' and Pre-Development Subtenants' continued operation of their businesses in substantially the same manner as the Existing Subtenants are operated as of the date of the Tri-Party Agreement, including an equivalent amount of private and shared or common refrigeration as is available in the existing flower mart, and (c) the site allows all of the Existing Subtenants and Pre-Development Subtenants to be relocated together and at one time.~~.

~~102.1 "**Temporary Site Approval**" means any land use approval, 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 Site by the existing flower market~~

~~tenants during the construction of the Project. The list of Temporary Site Approvals, and the Planning Code exceptions applicable to the Temporary Site, at 2000 Marin are included in Exhibit Q.~~

~~1.113~~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.

~~1.114~~1.120 "**Term**~~"~~" has the meaning set forth in Section 2.2.

~~1.115~~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.

~~1.116~~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.

~~1.117~~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.

~~1.118~~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;

~~1.119~~1.125 "**Transportation Program**" means the transportation program set forth in Exhibit J.

~~1.120~~1.126 "**Tri-Party Agreement**" means that certain Tri-Party Agreement ~~between~~among Developer, the Tenant Association, and the ~~San Francisco Flower Mart LLC~~SFFM, dated as of June 26, 2015, and amended and restated on _____, 2019.

~~1.10.1 "**Upfront PD Payments**" has the meaning set forth in Section 1 to Exhibit F-3.~~

~~1.122~~1.127 "**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.

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

~~1.123~~1.129 "**Viable**" has the meaning set forth in Section ~~6.1.~~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.

~~1.12.1 "**Viable**" has the meaning set forth in Section 3.6.1.~~

~~1.125~~1.130 ~~"~~"**Workforce Agreement**~~"~~" means the Workforce Agreement attached hereto as Exhibit O.

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

~~1~~1.2. EFFECTIVE DATE; TERM

115.2.1 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 ~~("**Effective Date**").~~.

116.2.2 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 ~~1(a)~~ upon completion of the first Phase ~~1(a),~~, 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 ~~1(a)~~ during the Initial Term and thereafter continues to diligently prosecute the first Phase ~~1(a)~~ 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.

~~11~~7.2.3Phasing~~.~~. Developer ~~shall complete~~anticipates completing Phase 1(a) first, before ~~Phase 1~~Phase 1(b) or Phase 1(c~~),~~); however, Developer may alter the anticipated phasing, including completion of multiple Phases simultaneously, so long as ~~to complete~~ the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) ~~before the~~described in Exhibit H are completed prior to Developer's receipt of ~~certificates~~the first certificate of occupancy for ~~the office portions of the Blocks Building or for~~ any ~~of the other Buildings. Subject to the requirement to complete Phase 1(a) first, Developer may complete the Phases in any order and may develop Phases simultaneously.~~ Phase or portion thereof.

~~11~~8. TEMPORARY RELOCATION SITE AND PERMANENT OFF-SITE FACILITY

3.

~~11~~9.3.1Temporary Relocation Site~~.~~. Before Developer may begin demolition on the portion of the Project Site ~~that is actively occupied by Existing Subtenants and Pre-Development Subtenants~~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 ~~(upon completion, the "Temporary Facility"),~~, and (c) move the Vendors that occupy the Existing ~~Subtenants~~Flower Market as of the Relocation Date and ~~Pre-Development Subtenants that~~ wish to be relocated to the Temporary Relocation Facility ~~(collectively, the "Vendors")~~ at no cost to the Vendors in accordance with the Tri-Party Agreement. Developer shall ensure that the ~~Existing Subtenants and Pre-Development Subtenants~~Vendors have the continuing right to occupy the Temporary Relocation Facility under the Interim Lease, on the same terms of their then-existing ~~leases~~subleases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than ~~five (5~~six (6) years, including any extension options, from the ~~date that the last of the Vendors is moved to the Temporary Facility~~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 ~~Existing Subtenants and Pre-Development Subtenants~~Vendors straight to the Alternative Permanent Site if the ~~City selects the Payment Option and the~~ Permanent Off-Site Option is selected when the Permanent Off-Site Facility at the Alternative Permanent Site ~~has been completed by the initial move date.~~ is complete.

119.1 ~~Payment~~Permanent Off-Site Option or Stay Option~~.~~. As set forth in this Article 3, the City shall elect either the ~~Payment~~Permanent Off-Site Option or the Stay Option. Following the ~~City~~City's election, Developer shall either (i) complete the New Wholesale Flower

Market at the Project Site under the Stay Option, or (ii) ~~make~~complete the ~~New Market Payment to~~Permanent Off-Site Facility at the ~~City~~Alternative Permanent Site under the ~~Payment~~Permanent Off-Site Option.

~~119.2 Option Period; Exercise Notice. In accordance with this Article 3, the City shall exercise the Stay Option or the Payment Option on or before the date that is sixty (60) days following the Effective Date, without extension for a Litigation Extension or Excusable Delay but subject to extension as set forth in Section 3.4 (the "**Option Period**"). The City shall exercise the Stay Option or the Payment Option by delivery of written notice to Developer in the form attached as Exhibit G-1 (the "**Exercise Notice**"). Developer has no right or obligation to consider whether any of the City's requirements for exercise of the Stay Option or the Payment Option have been satisfied, and Developer shall rely solely upon receipt of the Exercise Notice in the form attached in order to proceed with the Stay Option or the Payment Option, as selected by the City. Developer has no right to condition or reject the City's exercise of the Payment Option or to determine the location of the Permanent Site provided, for purposes of determining the New Market Payment amount, the Permanent Site must substantially meet the requirements in Exhibit F.~~

~~119.3 Potential City Extension of the Option Period; Final City Election. During the Option Period, the Tenant Association, acting through counsel for the Tenant Association, will send to the City~~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 ~~Payment Option in the form attached as Exhibit G-3 (the "**Payment Notice**"). If the City does not receive the Payment Notice or the Stay Notice before the end of the Option Period, the City has the right, in~~

~~its sole discretion, to extend the Option Period by up to an additional sixty (60) days (the "**Extended Option Period**") by providing to Developer a written notice of extension; provided, the City shall in fact extend the Option Period for the Extended Option Period if the City receives a written request to do so by the Tenant Association, acting through counsel for the Tenant Association. During the Extended Option Period, if any, OEWD and Planning staff agree to meet and confer with the Tenant Association upon request in an effort to identify or narrow the potential sites that may become the Permanent Site and any related issues. If, notwithstanding any such extension, the City still does not receive the Payment Notice or the Stay Notice before the end of the Extended Option Period, then the City shall elect either the Payment Option or the Stay Option based upon all of the information available as of such date. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within twenty (20) days following the end of the Extended Option Period. If the City fails to send the Exercise Notice by the end of this twenty (20) day period, then the City will be deemed to have selected the Payment Option.~~

~~119.4 Stay Option. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Option Period, the City will send the Exercise Notice to Developer electing the Stay Option, and the Payment Option shall terminate and be no further force or effect.~~ 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~~Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.~~

~~119.5 Payment Option.~~

~~19.5.1Permanent Site. The Payment Option is designed to provide for the construction of the Permanent Facility at an alternative site proposed by the Tenant Association and approved by the City (the "**Permanent Site**"). While the City expects that the Tenant Association will agree upon a Permanent Site that is Viable, the City retains the right to select the Permanent Site if the Tenant Association does not select a site in San Francisco that is Viable or the Tenant Association cannot otherwise agree on a site. Nothing in this Agreement shall prevent the City from changing the Permanent Site upon discovery that the previously approved Permanent Site is no longer Viable, and nothing shall require the City to add funds to the New Market Payment in order to complete the Permanent Facility at the Permanent Site.~~

~~19.5.2Viability. For purposes of viability of the Permanent Site under this section, a proposed site will be deemed "**Viable**" if the following conditions are met: (i) the site is in San Francisco and zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (ii) that 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 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 F-1 for the Permanent Facility; (iv) the site is owned by an entity willing to enter into negotiations for a long term lease, consistent with the requirements of this Agreement and the Tri Party Agreement, including the length of term, the rents payable by the vendors with nondisturbance protections for the vendors, and the construction of the Permanent Facility with the New Market Payment; and (v) the site has an existing building that substantially~~

meets, or could be modified so as to substantially meet, the requirements in Exhibit F-1 for the Permanent Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources. For purposes of viability of the Temporary Site under Section 3.1, a proposed site will be deemed **"Viable"** if the following conditions are met: (i) the site is zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (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 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 Facility; (iv) the site is owned by an entity willing to enter into negotiations for the Interim Lease, consistent with the requirements of this Agreement and the Tri-Party Agreement, including the timely availability of the site, the length of term, the rents payable by the vendors with nondisturbance protections for the vendors; 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 Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources.

119.5.3Exercise Conditions. The City shall exercise the Payment Option if the following requirements are satisfied before expiration of the Option Period, or the Extended Option Period if applicable. The City may waive any of the following requirements except for the requirement set forth in subsection (c):

~~(a)~~3.3 ~~The City receives the Payment Notice from~~ 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~~, (1)~~ to choose either the ~~City's exercise of the Payment~~Stay Option~~, (2) one~~ or ~~more proposed locations~~the Permanent Off-Site Option, and shall include, substantially in ~~San Francisco, acceptable to~~ the form and content in the "Tenant Association~~, for the Permanent Site (and identifying those sites),~~ ~~(~~ 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 ~~Payment Option, the~~ Tri-Party Agreement and any other related documents, the Temporary ~~Site and the~~Relocation Site, New Wholesale Flower Market, the Alternative Permanent Site, and the relocation of ~~vendors~~Vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (42) 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 (~~5~~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~~; and~~.

~~(b)~~ 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.~~The Tenant Association sends to the City with the Payment Notice, a brief summary of the advantages of the alternative sites proposed by the Tenant Association for the Permanent Site, which may include to the extent available (1) a preliminary budget for the improvements, as well as a statement of anticipated funding sources (on top of the New Market Payment made by Developer, if any), and (2) any additional information that the Tenant Association believes is relevant to the determination of Viability of the proposed locations; and~~

~~(c) The Planning Director and the OEWD Director of Development determine, acting reasonably, that at least one of the locations proposed by the Tenant Association is Viable for the Permanent Facility, or if not, that an alternative location for the Permanent Site selected by the City is Viable.~~

3.4

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) in order to create a permanent wholesale flower market at an Alternative Permanent Site by Developer (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 or 35 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.

3.8 Completion of Design and Construction Documents. Following exercise of the ~~Payment~~Permanent Off-Site Option, Developer~~, the Tenant Association and City~~ shall ~~work together with the Alternate Landlord to~~ complete design and construction documents for the Permanent ~~Facility,~~ 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 60-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 nine (9) 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 60-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 appeal in the event that the Permanent Off-Site Entitlement Approvals are appealed, up to 120 days; (iii) an administrative appeal or judicial challenge is filed by Tenant Association, SFFM, or any vendor at the Existing Flower Market challenging the Permanent Off-Site Approvals, subject to a 60-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 in an "as is" condition ("**As Is Relocation Option**"), which (unless SFFM elects to require Developer to construct the Permanent Off-Site Facility as described in Section 3.8.1(c) below) means the condition existing at the Alternative Permanent Site as of SFFM's exercise of the As Is Relocation Option; and

~~3.6.4~~(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 ~~in Exhibit F-2.~~ 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, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco. In the cases described in Section 3.8.1 (i), (ii), or (iv) above and if SFFM accepts the As Is Relocation Option pursuant to this Section 3.8.1(c), 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, 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.

~~119.5.5 Pre-Development Payments. As set forth in Exhibit F-3, the Developer shall pay to the City Two Hundred and Fifty Thousand Dollars ($250,000) and Seven Hundred and Fifty Thousand Dollars ($750,000) in Upfront PD Payments as part of Pre-Development Costs, within fifteen (15) and thirty (30) days following the Effective Date, respectively, so that the City can pay the same to the Tenant Association for the Tenant Association's and its affiliates' documented third party costs of negotiating exhibits to this Agreement, the amendment to the Tri-Party Agreement,~~

~~investigation, design, feasibility and other predevelopment costs relative to the Stay Option and the Payment Option, including costs incurred before the Effective Date. The Tenant Association shall send invoices of Pre-Development Costs incurred to the City, for approval and processing through the OEWD Development Director. Upon exhaustion of the Upfront PD Payments, the Tenant Association shall invoice Pre-Development Costs monthly or quarterly, or as otherwise agreed by the City, for review and approval by the City and Developer, which approval will not be unreasonably withheld or delayed. The City, Developer and the Tenant Association will meet regularly to review budgets, invoices and contracts for all Pre-Development Costs, and to cooperate on the completion of all design and construction documentation for the Permanent Facility, as set forth in Exhibit F-2. If there is any disagreement between Developer and the Tenant Association on the appropriateness or amount of any Pre-Development Cost or any design element for inclusion in the Permanent Facility, the matter will be decided by the OEWD Development Director. For Pre-Development Costs, Developer may pay amounts due and owing directly to the City or to the specified contractor or entity (with standard documentation) that performed the work. Developer and the Tenant Association shall each maintain books and records for all Pre-Development Costs and payments made by Developer and the Tenant Association, respectively, which will be subject to City review and audit upon request.~~

~~119.5.6New Market Payment. Developer shall pay to the City the development cost payment determined in accordance with the Permanent Facility specifications in Exhibit F-1 and using the process in Exhibit F-2 (the "**New Market Payment**"). The New Market Payment is designed to cover certain applicable costs~~

associated with the feasibility determination and leasing of the Permanent Site and the design, permitting and construction of the Permanent Facility, based on the actual designs and construction documents completed to date, and for any items not yet completed, based on the assumptions set forth in Exhibit F including the rent schedule. For sake of clarity, the New Market Payment includes all Pre-Development Costs (based on actuals to date of determination), and thus all amounts previously paid by Developer for Pre-Development Costs, but excluding feasibility analysis costs, will be credited against the New Market Payment. The process for determining the New Market Payment will begin within thirty (30) days following the earlier of (1) City's notice to Developer that all Pre-Development Cost work has been completed, (2) the second anniversary of the date that the last of the Existing Subtenants and Pre-Development Subtenants has been moved to the Temporary Facility, or (3) the third anniversary of the Effective Date, subject to potential extension at the City's discretion in the event the above date is more than six (6) months away from the anticipated receipt of the first temporary certificate of occupancy for the Project. [*New Market Payment timing by Developer.*]

119.5.7Use of New Market Payment. Upon receipt, the City shall hold the New Market Payment for costs relating to the Permanent Facility. In no event shall New Market Payment funds be used to pay any vendor to retire, to go out of business, or to move its business to an alternative location. The funds shall be held by the City's Controller, and the City shall establish disbursement procedures and safeguards to ensure that all New Market Payment funds are properly used and disbursed as contemplated by this Agreement. The New Market Payment funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City's

~~Controller shall maintain records as part of the City's accounting system to account for all the expenditures and the remaining balance.~~

~~119.5.9 Payment Authorization. By approving this Agreement, the Board of Supervisors understands that the City will make payments, using Developer's funds, to the Tenant Association or the Alternate Landlord or their contractors and agents, and the Board of Supervisors authorizes the Controller, OEWD and other City staff to take such actions as needed to make such payments consistent with this Agreement, including, if necessary, the assignment of a City vendor number for payment notwithstanding the lack of a City contract. The City waives or overrides any ordinances or processes that would otherwise prevent the City from making the payments contemplated by this Agreement. Without limiting the foregoing, the parties understand and agree that the New Market Payment are not City funds and the construction of the Permanent Facility is not a public work under Administrative Chapter 6.~~

~~119.5.10 Contracting Safeguards. The City anticipates that the Tenant Association's or its landlord's construction contracts and professional services will be negotiated to ensure competitive market rates, and that appropriate safeguards will be established to ensure that there is no overpayment, self-dealing or conflicts of interest. Contracts with funding from the New Market Payment shall include First Source Hiring, prevailing wage, and other City workforce requirements.~~

~~119.5.11 Excess Funds. If New Market Payment funds remain unexpended upon completion of the New Flower Market or ten (10) years following the Effective Date, whichever is earlier, the City shall use the unexpended funds~~

to subsidize affordable PDR uses and for other community benefits, as determined by the Planning Director and the Director of OEWD.

119.6 Developer's Rights and Obligations During and After Payment Option Exercise. Developer and the Tenant Association shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is disbursed by the City in good faith in accordance with this Agreement. Developer shall have no right or obligation regarding the exercise of the Payment Option or the Stay Option. Subject to compliance with Exhibit F 2 processes, Developer also shall have no right to object to the Permanent Site selection, the design or size of the Permanent Facility (except, for purposes of determining the New Market Payment, the facility must be in substantial conformance with the specifications set forth in Exhibit F), or the contractors or agents selected by the Tenant Association or the City. The City shall, working with the Tenant Association, use good faith efforts to assist in the design and construction of the Permanent Facility generally consistent with the description outlined in Exhibit F. Upon the City's exercise of the Payment Option and provided Developer pays the Pre-Development Costs and the New Market Payment in a timely manner as required by this Agreement, (1) Developer will have no obligation to build the New Flower Market at the Project Site or otherwise ensure completion of the Permanent Facility, (2) Developer shall have the right, but not the obligation, to proceed with the Project Variant in accordance with the requirements of this Agreement, and (3) Developer shall be deemed to have satisfied the Community Benefits obligations under Section 5.1.1(a) (b). The Tenant Association's or its landlord's failure to start or complete the Permanent Facility for any reason shall not be a breach by Developer under this Agreement, and Developer's sole obligation relative to the Permanent Facility, following payment of the New Market Payment, shall be to pay moving costs to the Temporary Site and to

~~then to the Permanent Site, provided that such moving costs are incurred no later than the end of the Interim Lease or six years from the Effective Date, whichever is later.~~

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, SFFM, or any vendor at the Existing Flower Market, 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 the 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 the 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 Ten Million Dollars ($10,000,000), 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, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco.

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.

~~3.8~~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.

~~3.9~~3.10No City Liability~~.~~. Following exercise of the ~~Payment~~Permanent Off-Site Option, OEWD and Planning staff shall use good faith efforts to assist ~~the Tenant Association~~Developer with the development of the Permanent Off-Site Facility at the ~~finally selected~~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~~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, the City may reimburse itself from the Upfront PD Payments or the New Market Payment, if any (which shall, in turn, reduce the amounts available for construction of the Permanent Facility).~~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 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, 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 and the Permanent Off-Site Facility. The provisions of this Section 3.11 shall survive the expiration of this Agreement.

~~122.~~4. GENERAL RIGHTS AND OBLIGATIONS.

123.4.1 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.

124.4.2 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 ~~Temporary~~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.

125.4.3 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.

126.4.4 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 ~~Property~~Project Site.

~~127.~~4.5 Transfer Parcel~~.~~. Before the ~~start~~issuance of the first construction ~~of~~document for the ~~Blocks Building~~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 ~~the Blocks Building.~~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.

~~128.~~5. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

129.5.1 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.

~~12~~9.1.~~1~~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 ~~Payment~~Permanent Off-Site Option is exercised, ~~payment of~~ the ~~New Market Payment for~~ construction and development of the ~~New Flower Market~~Permanent Off-Site Facility at the Alternative Permanent Site in accordance with Article 3;

(b) the rent subsidies ~~described~~per the Tri-Party Agreement, in ~~Article 3~~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 ~~payment for the relocation~~ 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 at the ~~Gateway~~Blocks Building, 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; ~~and~~

(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 ~~(or Project Variant).~~; and

~~(i)~~(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 support street cleaning efforts in SoMa.

129.1.25.1.2 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 Finally Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and ~~Temporary~~Relocation Site Approvals with respect to 2000 Marin, if applicable) have not been obtained or Finally 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.

130.5.2 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 ~~Site,~~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 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.

5.2.15.3.1 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.

131.5.3. 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.

132.5.4 City Cost Recovery.

~~132.1.1~~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.

~~132.1.2~~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.

~~132.1.3~~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.

~~132.1.4~~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.

~~13.2.1.5~~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.

13.5.5 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.

134.5.6 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.

~~135.~~6. VESTING AND CITY OBLIGATIONS

136.6.1 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 ~~Temporary~~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 ~~Temporary~~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). 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 ~~Temporary~~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 ~~Temporary~~Relocation Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

137.6.2 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 6.67, and (iii) this Agreement (collectively, ~~"~~"**Applicable Laws**~~").~~").

138.6.3 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.

3.6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from ~~the~~ 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.

4.6.5 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.

5.6.6 Denial of a Later Approval ~~or Temporary~~, 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 ~~Temporary~~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.~~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.

~~6.1.1~~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.~~7~~9.2); or

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

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

~~6.1.2~~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;

~~6.1.3~~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.

7.6.8 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 ~~the~~ 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 ~~Phase 1(b) office building~~Project remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to ~~the Phase 1(b)~~additional office ~~development~~allocation of no less than 351,895 gsf under Sections 320-325 over ~~all~~ 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 ~~Phase 1(b) office building~~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 ~~Phase 1(b)~~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 ~~each Prop. M allocation is granted under this Agreement~~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).

8.6.9 Fees and Exactions.

8.1.16.9.1 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.

8.1.26.9.2 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.

Notwithstanding the foregoing, if the City has not waived Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000) 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.

~~8.1.3~~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.

9.6.10 Changes in Federal or State Laws.

~~9.1.1~~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.

9.1.26.10.2 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.

9.1.36.10.3 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.

9.1.46.10.4 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.

10.6.1.1 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.

11.6.12 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.

12.6.13 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.

13.6.14 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.

~~14.~~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.

~~15.~~8. MUTUAL OBLIGATIONS

16.8.1 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.

17.8.2 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~~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~~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~~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.

18.8.3 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.

19.8.4 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.

~~20.~~9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

21.9.1 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.

22.9.2 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.

~~22.1.1~~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.

~~22.1.2~~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.

~~22.1.3~~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.

~~22.1.4~~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.

~~23.~~10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

24.10.1 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.

25.10.2 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.

26.10.3 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.

27.10.4 Remedies.

~~27.1.1~~10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections ~~10s~~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.

~~27.1.2~~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.

~~27.1.3~~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.

~~27.1.4~~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.

28.10.5 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.

29.10.6 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.

~~30.~~11. FINANCING; RIGHTS OF MORTGAGEES

31.11.1 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.

32.11.2 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.

33.11.3 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.

34.11.4 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.

35.11.5 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.

36.11.6 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.

37.11.7 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.

~~38.~~12. AMENDMENT; TERMINATION; EXTENSION OF TERM

39.12.1 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).

40.12.2 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.

41.12.3 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.

42.12.4 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.

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

~~43.1.1~~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 issued 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, ~~or an Approval~~Approval, Relocation Site Approval, or Permanent Off-Site Approval that is issued 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 issued 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, ~~the~~ Relocation Site Approvals, and Permanent Off-Site

Approvals issued prior to the Relocation Date, the date of the initial grant of such Approval, Relocation Site Approval, or Permanent Off-Site Approval issued 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.

~~43.1.2~~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.

~~44.~~13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

13.1~~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.

13.2~~1~~4.2 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.

13.3~~1~~4.3 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.

13.414.4 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.

13.514.5 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.

13.614.6 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.

~~14.~~15. DEVELOPER REPRESENTATIONS AND WARRANTIES

14.116.1 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.

14.216.2 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.

14.316.3 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.

14.416.4 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.

1.6.16.5 ~~14.5~~ 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.

14.616.6 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.

~~15.~~17. MISCELLANEOUS PROVISIONS

15.117.1 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.

15.217.2 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.

15.317.3 Binding Covenants; Run With the Land. Pursuant to Section ~~6586~~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 ~~Section~~Sections 1468-1470.

15.417.4 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.

15.517.5 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.

15.617.6 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.

15.717.7 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.

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

15.917.9 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.

15.1017.10 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.

15.1117.11 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

15.1217.12 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.

15.1317.13 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.

15.1417.14 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.

15.1517.15 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.

15.1617.16 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.

15.1717.17 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.

15.1817.19 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 as to form:

DENNIS J. HERRERA, City Attorney

By:

~~Charles Sullivan~~Elizabeth A. Dietrich
Deputy City Attorney

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: _____

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco ("SFMTA") has reviewed the Development Agreement (the "**Development Agreement**") between the City and KR Flower Mart LLC, a Delaware limited liability company ("**Developer**") to which this Consent to Development Agreement (this "**SFMTA Consent**") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA CPE and Addendum, including the MMRP, consented to and agrees to be bound by the Development Agreement as it relates to matters under the SFMTA's jurisdiction, including the Transportation Demand Management Program.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
Edward D. Reiskin, Director of Transportation

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

San Francisco Municipal Transportation Agency Board of Directors
Resolution No. _____
Adopted: _____, 2019

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)

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)

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)

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 _____

MEMORANDUM OF UNDERSTANDING #1
630-686 Brannan Street

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") dated as of June 1, 2015, is made by and between the City and County of San Francisco, a Charter city and county (the "**City**"), acting by and through its Office of Economic and Workforce Development ("**OEWD**") and KR Flower Mart, LLC, a Delaware limited liability company ("**KRC**") in connection with a proposed project at 630-686 Brannan Street in San Francisco.

RECITALS

This MOU is made with regard to the following facts, intentions and understandings:

A. In April 2015, KRC filed applications for a preliminary project assessment and environmental review (Case Nos. 2015-004256PPA and 2015-004256E) for a multi-phased, mixed-use development plan covering 630-698 Brannan Street, 548 5th Street, and 149 Morris Street in the block bounded by Brannan, Bryant, Fifth, and Sixth Streets (as described in the application, and as may be revised and updated from time to time, the "**Project**").

B. The Project currently contemplates the demolition of the existing on-site flower market at the Property, and construction of up to 1.54 million square feet of new office and retail space, as well as the creation of a new flower mart, including parking and loading facilities ("**New Flower Mart**"). The Project also seeks to modify and improve circulation throughout the area. The final scope of the Project is not fixed at this stage in the public process. Accordingly, KRC and OEWD understand and agree that the Project will be refined and modified through the community and stakeholder review, environmental review, and planning processes.

C. In connection with the Project, KRC intends to apply for various discretionary approvals required for the Project, including but not limited to any conditional use authorizations or variances, allocations of office space, approval of parcel map, subdivision or lot line adjustments, approval and acceptance of any dedications, encroachments or sidewalk widening. KRC and the City desire to negotiate for other City agreements related to the construction of the New Flower Mart, benefits for its tenants, and other public benefits in connection with the Development, and KRC has requested that the City consider a development agreement in connection with the Project. The Project and the entitlements will require review and approval by the City's Planning Commission and Board of Supervisors, and may require approval of other City agencies.

D. OEWD is currently working with KRC, as well as the City Attorney's Office and other City agencies, to determine the appropriate scope of all of the Project transaction and entitlement documents. This MOU is to provide a payment mechanism for KRC to reimburse OEWD and other City agencies (including the City Attorney's Office) for staff time and materials expended on any component of the Project.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OEWD and KRC agree to the following:

1. Negotiations and Entitlement Process. OEWD, working closely with the Planning Department, shall act as the lead representative of the City in negotiating the substance of the proposed entitlement package, including any transaction or approval documents (such documents shall be collectively referred to as the "**Project Documents**"). OEWD shall consult with staff from affected City agencies, and such City agencies shall contribute personnel and staff time as may be directed by their respective directors or department heads. Following negotiations, all Project Documents shall be subject to review and approval of the Planning Commission, applicable City agencies, and the Board of Supervisors, each in their sole discretion.

2. Reimbursement of City Costs.

(a) KRC shall reimburse OEWD for the actual costs incurred by the City for all work associated with the preparing, adopting or negotiating the Project Documents for the Project. Eligible costs shall include, without limitation, the (1) fees and expenses of the City Attorney's Office staff at the rates charged by the City Attorney's Office to third party outside developers from time to time, (2) actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers), (3) actual costs related to public outreach and information; and (4) costs of staff time for the City agencies consulted in communication with the Project Documents. Eligible costs shall not include costs that are paid or reimbursed through planning department or other project applications. Before engaging any outside counsel or consultants, OEWD shall obtain KRC's approval regarding the proposed engagement, which approval shall not be unreasonably withheld. OEWD shall be responsible for coordinating the billing of all City agencies as described in this section.

(b) OEWD will provide KRC with quarterly invoices. These invoices shall indicate the hourly rate for each OEWD or City staff member at that time, the total number of hours spent by each City staff member on the tasks during the invoice period, any additional costs incurred by the City and a brief non-confidential description of the work completed.

(c) The parties anticipate that OEWD and other City staff time to be reimbursed shall not exceed $250,000 based on following staffing (under a 40-hour work week): up to 10% of Director of Development's time and up to 25% of the Project Manager or Managers' time, plus City Attorney time. All City staff time will be billed in accordance with this MOU, and the above estimate shall not be considered a cap on costs. See Appendix A for current billing rates.

(d) KRC shall pay the invoiced amount within 45 calendar days of receipt from OEWD, provided that (i) that the maximum amount payable shall not exceed the budget established in subsection (c) above, as the same may be revised from time to time as provided in Section 14(a), (ii) in the event that City's costs and expenses exceed the amounts set forth in the approved budget, then, notwithstanding anything in this MOU to the contrary, City shall have the

right to suspend additional work on the Project under this MOU until the parties reach agreement on a revised budget and additional payments to be made by KRC, including any amounts due by KRC for work previously performed, and (iii) in the event the parties cannot reach agreement on a revised budget, or if KRC fails to pay any amounts due and owing hereunder, then City shall have the right to terminate this MOU without cost or liability.

(e) If KRC in good faith disputes any portion of an invoice, then within 60 calendar days of receipt of the invoice KRC shall provide written 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. KRC shall have no right to withhold the disputed amount. If any dispute is not resolved within 90 days of KRC's notice to City of the dispute, KRC may pursue all remedies at law or in equity to recover the disputed amount. KRC shall have no obligation to reimburse City for any cost that is not invoiced to KRC within twenty-four (24) months from the date the cost was incurred.

(f) If KRC submits an application for a development agreement, the parties may terminate this MOU and revise the payment mechanisms for the reimbursement of all City costs consistent with San Francisco Administrative Code Chapter 56.

4. City Limitation. Except as otherwise expressly set forth herein to the contrary, nothing in this MOU shall obligate OEWD or any other City department to expend funds or resources, nor shall anything in this MOU be construed as a limitation on any party's authority to contribute staff, funds or other resources to the processing, review and consideration of the Project. Nothing in this MOU shall limit the discretion to be exercised by City staff and City officials in connection with the Project.

5. No Liability; Termination. The parties are entering into this MOU in order to cooperate in negotiating the substance of an entitlement package with respect to the Project. The parties understand and agree that the City would not be willing to enter into this MOU if it could result in any liability or cost to the City. Accordingly, in the event that KRC believes that the City has violated any of the terms of this MOU, KRC's sole remedy shall be to terminate this MOU or seek recovery of disputed funds per Sec. 2(e) above. KRC shall be responsible for the eligible costs incurred by any of the City agencies before the termination notification. Notwithstanding anything to the contrary in this MOU, either party shall have the right to terminate this MOU at any time and for any reason without cost or liability by providing notice of termination to the other party, provided any such termination shall not relieve KRC of its reimbursement obligations with respect to work performed before the date of termination.

6. City Discretion. KRC acknowledges and agrees that by entering into this MOU, OEWD is not committing itself or agreeing to approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Planning Commission, the Board of Supervisors, the Mayor, or any other City agency, commission or department, and that the Project Documents and approvals are subject to the prior approval of the Planning Commission, the Board of Supervisors, and the Mayor (and perhaps other City agencies, as applicable), each in their sole and absolute discretion.

7. Assignment. KRC may assign its rights and obligations under this MOU to an affiliate or subsidiary entity at any time with notice to but without the consent of OEWD, provided, if such affiliate or subsidiary fails to pay amounts due hereunder, then KRC shall remain liable for such payment.

8. Environmental Review. The Project ultimately proposed by KRC shall be subject to a process of thorough public review and input and all necessary and appropriate approvals; that process must include environmental review under CEQA before a City department, commission, or any other City decision-maker may consider approving a project; and the Project will require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this MOU commits, or shall be deemed to commit, the City or a City official to approve or implement any project, and they may not do so until environmental review of the Project as required under CEQA has been completed. Accordingly, all references to the "Project" in this MOU shall mean the proposed project as revised and subject to future environmental review and consideration by the City. The City and any other public agency with jurisdiction over any part of the Project shall have the absolute discretion before approving that project to: (i) make such modifications to the Project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the Project; (iv) balance the benefits of the Project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the Project.

9. Notices. Unless otherwise indicated elsewhere in this MOU, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To OEWD: Ken Rich, Director of Development
c/o Sarah Dennis Phillips, Project Director
Office of Economic and Workplace Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: 415.554.5194
Email: ken.rich@sfgov.org

To KRC: Mike Sanford, Executive Vice President, Northern California
c/o Mike Grisso, Senior Vice President, Development and Land Planning
Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA, 94105
Phone: 415.778.7777
Fax: 415.243.8803
Email: mgrisso@kilroyrealty.com

Any notice of default must be sent by registered mail.

10. California Political Reform Act. The parties acknowledge that payments pursuant to this MOU from KRC to OEWD are payments to the City, not to any individual employee or officer of the City, and that the payments therefore are not "income" to any City employee or officer under the California Political Reform Act, California Government Code Section 81000, *et seq.*

11. Notification of Limitations on Contributions. KRC acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. KRC acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more.

12. No Joint Liability. Nothing in this MOU shall be construed as giving a party the right or ability to bind other parties and nothing in this MOU shall be construed to create any joint liability with regard to, or as a result of, the activities undertaken by any of the parties, their employees, officers and/or agents. All employees, officers and/or agents of a party shall remain employees, officers and/or agents of that party and shall be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents.

13. Sunshine. KRC understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 et seq.) apply to this MOU and any and all records and materials submitted to the City in connection with this MOU.

14. Miscellaneous. (a) This MOU may be modified only in writing and by mutual consent of all parties. (b) This MOU shall become effective when signed by all OEWD and KRC. It shall remain in effect until terminated in writing by either party. (c) There are no intended third party beneficiaries of this MOU. The parties acknowledge and agree that this MOU is entered into for their benefit and not for the benefit of any other party. (d) This MOU shall be governed by the applicable laws of California. (e) This MOU contains all of the representations and the entire agreement between the parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU on the date set forth herein.

City and County of San Francisco, a
municipal corporation, acting by and through its
Office of Economic and Workforce Development

By: _____
Todd Rufo, Director

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: _____
Mike Sanford, Executive Vice President, Northern California

By: _____
Mike Grisso, Senior Vice President, Development and Land Planning

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

Appendix A

OEWD / Other City Staff – Billing Rates

(Hourly rates as of June 1, 2015)

Director of Development (Ken Rich)	$140.00
Project Director (Sarah Dennis Phillips)	$123.00
Administrative Analyst	$60.00
Citybuild Director	$115.00
Workforce Compliance Officer	$85.00
Employment Liaison	$87.00

190687

7-3-2019 Draft

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 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 a Payment 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 Site before Commencing Construction of the Project. Developer shall pay to move the flower market tenants back to the Project Site under the Project or to the Permanent Site under the Project Variant, as applicable. Alternatively, Developer may skip the Temporary Site and move the flower market vendors straight to the Permanent Site if the Permanent Facility has been completed at the Permanent Site by the time Developer initially moves the flower market vendors from the Project Site. These commitments were also made by Developer in a tri-party agreement between Developer, Tenant

Association, and San Francisco Flower Mart LLC, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**"), as further described in Exhibit D.

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.

G. As a result of the development of the Project in accordance with this Agreement, the City as 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 include development of a new permanent home for the flower market, with subsidized

rents, the dedication of a housing parcel with no fee credit, 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.

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 Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report (**"Bayview FEIR"**), which was certified by [INSERT] 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 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. [XX] and are incorporated herein by reference.

K. On _____, 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 _____, 2019.

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

1.6 "**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).

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

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

1.9 "**Associated Community Benefits**" is defined in Section 4.1.

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

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

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

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

1.14 "**Central SOMA Plan**" shall have the meaning set forth in Recital J.

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

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

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

1.18 "**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.

1.19 "**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.

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

1.21 "**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.

1.22 "**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. 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).

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

1.24 "**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 reasonable attorneys' fees and costs 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.

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

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

1.27 "**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.

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

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

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

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

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

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

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

1.35 "**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.

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

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

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

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

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

1.41 "**Exercise Notice**" has the meaning set forth in Section 3.3.

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

1.43 "**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.

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

1.45 "**Federal or State Law Exception**" has the meaning set forth in Section 6.8.1.

1.46 "**Finally 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 the entry of a final judgment, order or ruling upholding 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.

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

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

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

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

1.51 "**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.

1.52 "**Interim Lease**" means a lease entered into by Developer, as tenant, and

the owner of the Temporary Site, for the temporary flower market, consistent with the requirements of the Tri-Party Agreement and this Agreement.

1.53 "**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.

1.54 "**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.

1.55 "**Law Adverse to City**" is defined in Section 6.8.4.

1.56 "**Law Adverse to Developer**" is defined in Section 6.8.4.

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

1.58 "**Loan Commitment**" means the loan commitment made by a bona fide,

third party institutional lender to Alternate Landlord to provide the Debt for the Permanent Facility in accordance with the terms of this Agreement. The Loan Commitment will be subject to the approval of the City and Developer for consistency with this Agreement.

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

1.60 "**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 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.

1.61 "**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.

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

1.63 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site, including mezzanine financing, to secure an obligation made by the applicable property owner.

1.64 "**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.

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

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

1.67 "**New Market Payment**" has the meaning set forth in Section 3.6.4.

1.68 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market to be construction on the Project Site as part of the Project, as more particularly described in the project description in Exhibit B.1.

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

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

1.71 "**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.

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

1.73 "**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.

1.74 "**Payment Notice**" has the meaning set forth in Section 3.4.

1.75 "**Payment Option**" has the meaning set forth in Section 3.6.

1.76 "**Permanent Facility**" means a permanent flower market facility to be constructed at the Permanent Site, in lieu of the New Wholesale Flower Market at the Project Site, pursuant to Section 3 and Exhibit F to this Agreement, in the event the Payment Option is exercised.

1.77 "**Permanent Interest Free Loan**" has the meaning set forth in Exhibit F-3.

1.78 "**Permanent KRC Contribution**" has the meaning set forth in Exhibit F-3.

1.79 "**Permanent Lease**" means the lease or agreement between Alternate Landlord and the Tenant Association, and/or its members, for the construction and use of the Permanent Facility, for not less than 15 years, that meets the requirements of this Agreement. The Permanent Lease will be subject to the approval of the City and Developer for consistency with this Agreement. The Parties will calculate the New Market Payment based on the terms of the Permanent Lease, as either set forth in the actual document or in a signed letter of intent.

1.80 "**Permanent Site**" has the meaning set forth in Section 3.6.1.

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

1.82 "**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 Payment Option is not 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 the Developer's relocation program in accordance with the Tri-Party Agreement.

1.83 "**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.

1.84 "**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.

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

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

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

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

1.89 **"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 Developer at the New Wholesale Flower Market.

1.90 **"Post-Development Sublease"** means a lease agreement at the New Wholesale Flower Market between the Developer and each Post-Development Subtenant.

1.91 "**Pre-Development Costs**" means the Tenant Association's and its affiliates' documented third party costs of negotiating exhibits to this Agreement, the amendment to the Tri-Party Agreement, and the long-term lease for the Permanent Site, if applicable, and all investigation, design, feasibility and other predevelopment costs relating to the Stay Option and the Payment Option, including the completion of design and construction documents for the Permanent Facility, permitting and entitlement costs, and all fees and costs of completing the Permanent Facility other than construction costs, all as approved by the City as set forth in this Agreement.

1.92 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who pursuant to the terms, and after the execution, of the Tri-Party Agreement entered into a lease agreement for space at the Project Site prior to the construction of the Project and the New Wholesale Flower Market.

1.93 "**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.

1.94 "**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.

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

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

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

1.98 "**Public Health and Safety Exception**" has the meaning set forth in Section 6.11.1.

1.99 "**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, repaving of _____ 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.

1.100 "**Relocation Matters**" has the meaning set forth in Section 3.6.2.

1.101 "**Second Payment**" has the meaning set forth in Section 3.6.3.

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

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

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

1.105 "**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.

1.106 "**Stay Notice**" has the meaning set forth in Section 3.4.

1.107 "**Stay Option**" has the meaning set forth in Section 3.5.

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

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

1.110 "**Temporary 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.

1.111 **"Temporary Site"** means the site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Facility. The Temporary Site will be at 2000 Marin Street, which is the pre-approved site per the Tri-Party Agreement, unless an alternative location is Viable and approved by Developer, the City and the Tenant Association. If 2000 Marin is not available because the SFPUC does not yet own the property by October 30, 2019, the City and Developer may agree upon an alternative site as the Temporary Site provided that (a) the site will include not less than 115,000 square feet of occupiable space [or not less than 100,000 square feet if the City determines that the site it can properly accommodate all Existing Subtenants and Pre-Development Subtenants that wish to relocate there], (b) the site will accommodate the Existing Subtenants' and Pre-Development Subtenants' continued operation of their businesses in substantially the same manner as the Existing Subtenants are operated as of the

date of the Tri-Party Agreement, including an equivalent amount of private and shared or common refrigeration as is available in the existing flower mart, and (c) the site allows all of the Existing Subtenants and Pre-Development Subtenants to be relocated together and at one time.

1.112 "**Temporary Site Approval**" means any land use approval, 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 Site by the existing flower market tenants during the construction of the Project. The list of Temporary Site Approvals, and the Planning Code exceptions applicable to the Temporary Site, at 2000 Marin are included in Exhibit Q.

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

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

1.115 "**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.

1.116 "**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.

1.117 "**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.

1.118 "**Transfer Parcel**" means vacant, unimproved land within the Central 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;

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

1.120 "**Tri-Party Agreement**" means that certain Tri-Party Agreement between Developer, the Tenant Association, and the San Francisco Flower Mart LLC, dated as of June 26, 2015, and amended on _____, 2019.

1.121 "**Upfront PD Payments**" has the meaning set forth in Section 1 to Exhibit F-3.

1.122 "**Vendors**" means the Existing Subtenants and Pre-Development Subtenants.

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

1.124 "**Viable**" has the meaning set forth in Section 3.6.1.

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

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 ("**Effective Date**").

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 Phase 1(a) upon completion of the Phase 1(a), including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the Phase 1(a) during the Initial Term and thereafter continues to diligently prosecute the Phase 1(a) 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 shall complete Phase 1(a) first, before Phase1(b) or Phase 1(c), so as to complete the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) before the receipt of certificates of occupancy for the office portions of the Blocks Building or for any of the other Buildings. Subject to the requirement to complete Phase 1(a) first, Developer may complete the Phases in any order and may develop Phases simultaneously.

3. TEMPORARY AND PERMANENT FACILITY

3.1 Temporary Site. Before Developer may begin demolition on the portion of the Project Site that is actively occupied by Existing Subtenants and Pre-Development Subtenants, Developer shall (a) obtain the exclusive right to occupy improved or unimproved real property for use of the Temporary Site, consistent with the requirements of the Tri-Party Agreement and this Agreement, (b) complete the Temporary Facility in accordance with the specifications set forth in Exhibit E (upon completion, the "**Temporary Facility**"), and (c) move the Existing Subtenants and Pre-Development Subtenants that wish to be relocated to the Temporary Facility (collectively, the "**Vendors**") at no cost to the Vendors in accordance with the Tri-Party Agreement. Developer shall ensure that the Existing Subtenants and Pre-Development Subtenants have the continuing right to occupy the Temporary Facility under the Interim Lease, on the same terms of their existing leases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than five (5) years, including any extension options, from the date that the last of the Vendors is moved to the Temporary Facility; 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 Facility, whichever is the case. Notwithstanding the foregoing, Developer may skip the Temporary Facility and move the Existing Subtenants and Pre-

Development Subtenants straight to the Permanent Site if the City selects the Payment Option and the Permanent Facility at the Permanent Site has been completed by the initial move date.

3.2 Payment Option or Stay Option. As set forth in this Article 3, the City shall elect either the Payment Option or the Stay Option. Following the City election, Developer shall either (i) complete the New Wholesale Flower Market at the Project Site under the Stay Option, or (ii) make the New Market Payment to the City under the Payment Option.

3.3 Option Period; Exercise Notice. In accordance with this Article 3, the City shall exercise the Stay Option or the Payment Option on or before the date that is sixty (60) days following the Effective Date, without extension for a Litigation Extension or Excusable Delay but subject to extension as set forth in Section 3.4 (the "**Option Period**"). The City shall exercise the Stay Option or the Payment Option by delivery of written notice to Developer in the form attached as Exhibit G-1 (the "**Exercise Notice**"). Developer has no right or obligation to consider whether any of the City's requirements for exercise of the Stay Option or the Payment Option have been satisfied, and Developer shall rely solely upon receipt of the Exercise Notice in the form attached in order to proceed with the Stay Option or the Payment Option, as selected by the City. Developer has no right to condition or reject the City's exercise of the Payment Option or to determine the location of the Permanent Site provided, for purposes of determining the New Market Payment amount, the Permanent Site must substantially meet the requirements in Exhibit F.

3.4 Potential City Extension of the Option Period; Final City Election. During the Option Period, the Tenant Association, acting through counsel for the Tenant Association, will send to the City a notice requesting that the City proceed with the Stay Option in the form attached as Exhibit G-2 (the "**Stay Notice**") or the Payment Option in the form attached as Exhibit G-3 (the "**Payment Notice**"). If the City does not receive the Payment Notice or the Stay Notice before the

end of the Option Period, the City has the right, in its sole discretion, to extend the Option Period by up to an additional sixty (60) days (the "**Extended Option Period**") by providing to Developer a written notice of extension; provided, the City shall in fact extend the Option Period for the Extended Option Period if the City receives a written request to do so by the Tenant Association, acting through counsel for the Tenant Association. During the Extended Option Period, if any, OEWD and Planning staff agree to meet and confer with the Tenant Association upon request in an effort to identify or narrow the potential sites that may become the Permanent Site and any related issues. If, notwithstanding any such extension, the City still does not receive the Payment Notice or the Stay Notice before the end of the Extended Option Period, then the City shall elect either the Payment Option or the Stay Option based upon all of the information available as of such date. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within twenty (20) days following the end of the Extended Option Period. If the City fails to send the Exercise Notice by the end of this twenty (20) day period, then the City will be deemed to have selected the Payment Option.

3.5 Stay Option. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Option Period, the City will send the Exercise Notice to Developer electing the Stay Option, and the Payment 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.

3.6 Payment Option.

3.6.1 Permanent Site. The Payment Option is designed to provide for the construction of the Permanent Facility at an alternative site proposed by the Tenant Association and approved by the City (the "**Permanent Site**"). While the City expects that

the Tenant Association will agree upon a Permanent Site that is Viable, the City retains the right to select the Permanent Site if the Tenant Association does not select a site in San Francisco that is Viable or the Tenant Association cannot otherwise agree on a site. Nothing in this Agreement shall prevent the City from changing the Permanent Site upon discovery that the previously approved Permanent Site is no longer Viable, and nothing shall require the City to add funds to the New Market Payment in order to complete the Permanent Facility at the Permanent Site.

3.6.2 Viability. For purposes of viability of the Permanent Site under this section, a proposed site will be deemed "**Viable**" if the following conditions are met: (i) the site is in San Francisco and zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (ii) that 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 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 F-1 for the Permanent Facility; (iv) the site is owned by an entity willing to enter into negotiations for a long term lease, consistent with the requirements of this Agreement and the Tri-Party Agreement, including the length of term, the rents payable by the vendors with nondisturbance protections for the vendors, and the construction of the Permanent Facility with the New Market Payment; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit F-1 for the Permanent Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources. For purposes of viability of the

Temporary Site under Section 3.1, a proposed site will be deemed **"Viable"** if the following conditions are met: (i) the site is zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (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 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 Facility; (iv) the site is owned by an entity willing to enter into negotiations for the Interim Lease, consistent with the requirements of this Agreement and the Tri-Party Agreement, including the timely availability of the site, the length of term, the rents payable by the vendors with nondisturbance protections for the vendors; 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 Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources.

3.6.3 Exercise Conditions. The City shall exercise the Payment Option if the following requirements are satisfied before expiration of the Option Period, or the Extended Option Period if applicable. The City may waive any of the following requirements except for the requirement set forth in subsection (c):

(a) The City receives the Payment Notice from 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, (1) the City's exercise of the Payment Option, (2) one or more proposed locations in San Francisco, acceptable to the Tenant Association, for the Permanent Site (and

identifying those sites), (3) a release of any claims by the Tenant Association against the City regarding this Agreement, the Payment Option, the Tri-Party Agreement and any other related documents, the Temporary Site and the Permanent Site, and the relocation of vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (4) 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 (5) 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; and

(b) The Tenant Association sends to the City with the Payment Notice, a brief summary of the advantages of the alternative sites proposed by the Tenant Association for the Permanent Site, which may include to the extent available (1) a preliminary budget for the improvements, as well as a statement of anticipated funding sources (on top of the New Market Payment made by Developer, if any), and (2) any additional information that the Tenant Association believes is relevant to the determination of Viability of the proposed locations; and

(c) The Planning Director and the OEWD Director of Development determine, acting reasonably, that at least one of the locations proposed by the Tenant Association is Viable for the Permanent Facility, or if not, that an alternative location for the Permanent Site selected by the City is Viable.

3.6.4 Completion of Design and Construction Documents. Following exercise of the Payment Option, Developer, the Tenant Association and City

shall work together with the Alternate Landlord to complete design and construction documents for the Permanent Facility, in accordance with the process in Exhibit F-2.

3.6.5 Pre-Development Payments. As set forth in Exhibit F-3, the Developer shall pay to the City Two Hundred and Fifty Thousand Dollars ($250,000) and Seven Hundred and Fifty Thousand Dollars ($750,000) in Upfront PD Payments as part of Pre-Development Costs, within fifteen (15) and thirty (30) days following the Effective Date, respectively, so that the City can pay the same to the Tenant Association for the Tenant Association's and its affiliates' documented third party costs of negotiating exhibits to this Agreement, the amendment to the Tri-Party Agreement, investigation, design, feasibility and other predevelopment costs relative to the Stay Option and the Payment Option, including costs incurred before the Effective Date. The Tenant Association shall send invoices of Pre-Development Costs incurred to the City, for approval and processing through the OEWD Development Director. Upon exhaustion of the Upfront PD Payments, the Tenant Association shall invoice Pre-Development Costs monthly or quarterly, or as otherwise agreed by the City, for review and approval by the City and Developer, which approval will not be unreasonably withheld or delayed. The City, Developer and the Tenant Association will meet regularly to review budgets, invoices and contracts for all Pre-Development Costs, and to cooperate on the completion of all design and construction documentation for the Permanent Facility, as set forth in Exhibit F-2. If there is any disagreement between Developer and the Tenant Association on the appropriateness or amount of any Pre-Development Cost or any design element for inclusion in the Permanent Facility, the matter will be decided by the OEWD Development Director. For Pre-Development Costs, Developer may pay amounts due and owing directly to the City or to

the specified contractor or entity (with standard documentation) that performed the work. Developer and the Tenant Association shall each maintain books and records for all Pre-Development Costs and payments made by Developer and the Tenant Association, respectively, which will be subject to City review and audit upon request.

3.6.6 New Market Payment. Developer shall pay to the City the development cost payment determined in accordance with the Permanent Facility specifications in Exhibit F-1 and using the process in Exhibit F-2 (the "**New Market Payment**"). The New Market Payment is designed to cover certain applicable costs associated with the feasibility determination and leasing of the Permanent Site and the design, permitting and construction of the Permanent Facility, based on the actual designs and construction documents completed to date, and for any items not yet completed, based on the assumptions set forth in Exhibit F including the rent schedule. For sake of clarity, the New Market Payment includes all Pre-Development Costs (based on actuals to date of determination), and thus all amounts previously paid by Developer for Pre-Development Costs, but excluding feasibility analysis costs, will be credited against the New Market Payment. The process for determining the New Market Payment will begin within thirty (30) days following the earlier of (1) City's notice to Developer that all Pre-Development Cost work has been completed, (2) the second anniversary of the date that the last of the Existing Subtenants and Pre-Development Subtenants has been moved to the Temporary Facility, or (3) the third anniversary of the Effective Date, subject to potential extension at the City's discretion in the event the above date is more than six (6) months away from the anticipated receipt of the first temporary certificate of occupancy for the Project. [*New Market Payment timing by Developer.*]

3.6.7 Use of New Market Payment. Upon receipt, the City shall hold the New Market Payment for costs relating to the Permanent Facility. In no event shall New Market Payment funds be used to pay any vendor to retire, to go out of business, or to move its business to an alternative location. The funds shall be held by the City's Controller, and the City shall establish disbursement procedures and safeguards to ensure that all New Market Payment funds are properly used and disbursed as contemplated by this Agreement. The New Market Payment funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City's Controller shall maintain records as part of the City's accounting system to account for all the expenditures and the remaining balance.

3.6.9 Payment Authorization. By approving this Agreement, the Board of Supervisors understands that the City will make payments, using Developer's funds, to the Tenant Association or the Alternate Landlord or their contractors and agents, and the Board of Supervisors authorizes the Controller, OEWD and other City staff to take such actions as needed to make such payments consistent with this Agreement, including, if necessary, the assignment of a City vendor number for payment notwithstanding the lack of a City contract. The City waives or overrides any ordinances or processes that would otherwise prevent the City from making the payments contemplated by this Agreement. Without limiting the foregoing, the parties understand and agree that the New Market Payment are not City funds and the construction of the Permanent Facility is not a public work under Administrative Chapter 6.

3.6.10 Contracting Safeguards. The City anticipates that the Tenant Association's or its landlord's construction contracts and professional services will be

negotiated to ensure competitive market rates, and that appropriate safeguards will be established to ensure that there is no overpayment, self-dealing or conflicts of interest. Contracts with funding from the New Market Payment shall include First Source Hiring, prevailing wage, and other City workforce requirements.

3.6.11 Excess Funds. If New Market Payment funds remain unexpended upon completion of the New Flower Market or ten (10) years following the Effective Date, whichever is earlier, the City shall use the unexpended funds to subsidize affordable PDR uses and for other community benefits, as determined by the Planning Director and the Director of OEWD.

3.7 Developer's Rights and Obligations During and After Payment Option Exercise. Developer and the Tenant Association shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is disbursed by the City in good faith in accordance with this Agreement. Developer shall have no right or obligation regarding the exercise of the Payment Option or the Stay Option. Subject to compliance with Exhibit F-2 processes, Developer also shall have no right to object to the Permanent Site selection, the design or size of the Permanent Facility (except, for purposes of determining the New Market Payment, the facility must be in substantial conformance with the specifications set forth in Exhibit F), or the contractors or agents selected by the Tenant Association or the City. The City shall, working with the Tenant Association, use good faith efforts to assist in the design and construction of the Permanent Facility generally consistent with the description outlined in Exhibit F. Upon the City's exercise of the Payment Option and provided Developer pays the Pre-Development Costs and the New Market Payment in a timely manner as required by this Agreement, (1) Developer will have no obligation to build the New Flower Market at the Project Site or otherwise ensure completion of

the Permanent Facility, (2) Developer shall have the right, but not the obligation, to proceed with the Project Variant in accordance with the requirements of this Agreement, and (3) Developer shall be deemed to have satisfied the Community Benefits obligations under Section 5.1.1(a)-(b). The Tenant Association's or its landlord's failure to start or complete the Permanent Facility for any reason shall not be a breach by Developer under this Agreement, and Developer's sole obligation relative to the Permanent Facility, following payment of the New Market Payment, shall be to pay moving costs to the Temporary Site and to then to the Permanent Site, provided that such moving costs are incurred no later than the end of the Interim Lease or six years from the Effective Date, whichever is later.

3.8 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.

3.9 No City Liability. Following exercise of the Payment Option, OEWD and Planning staff shall use good faith efforts to assist the Tenant Association with development of the Permanent Facility at the finally selected 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, or to any flower market Vendor relating to the New Wholesale Flower Market, the Permanent 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 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, the City may reimburse itself from the Upfront PD Payments or the New Market Payment, if any (which shall, in turn, reduce the amounts available for construction of the Permanent Facility).

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 Facility in accordance with and subject to the provisions of this Agreement, the Approvals, Later Approvals, and Temporary Site Approvals, and the City shall consider and process all Later Approvals for development of the Project and the Temporary Facility at the Temporary 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.

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 Property.

4.5 Transfer Parcel. Before the start of construction of the Blocks Building, 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 the Blocks 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 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 Payment Option is exercised, payment of the New Market Payment for construction of the New Flower Market at the Permanent Site in accordance with Article 3;

(b) the rent subsidies described in Article 3;

(c) the relocation of the Pre-Development Subtenants to the

Temporary Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or payment for the relocation to the Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party Agreement, including the requirement that all 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 at the Gateway Building, 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; and

(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 (or Project Variant).

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 Finally Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and Temporary Site Approvals, if applicable) have not been obtained or Finally 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 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 Site, 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 Site or a change in the location of the Temporary Site, the 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.

5.2.1 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 Temporary 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 Temporary Site Approvals 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). 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 Temporary Site Approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval and Temporary 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 6.6, 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 Site under this Agreement.

6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from the Developer a completed application (with any required supporting documentation) for

one of more Later 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 or Temporary Site Approval. If the City denies any application for a Later Approval that implements a Building that is part of the Project or a Temporary Site Approval for the Temporary 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 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 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 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 6.7.2); or

(l) Reduce the amount of allowable parking or loading for the Project or the Temporary Site.

6.7.2 The 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. _____ (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 the 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 Phase 1(b) office building remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to the Phase 1(b) office development under Sections 320-325 over all 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 Phase 1(b) office building 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 Phase 1(b) 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 each Prop. M allocation is granted under this Agreement 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 Site 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 Site or impose new conditions or requirements for the right to develop the Project or the Temporary Site (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, 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. 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 Site for pre-existing uses or for new spaces constructed for flower market tenants.

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 10s.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), including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, 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.

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

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

14. DEVELOPER REPRESENTATIONS AND WARRANTIES

14.1 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.

14.2 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.

14.3 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.

14.4 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.

14.5 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.

14.6 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.

15. MISCELLANEOUS PROVISIONS

15.1 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.

15.2 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.

15.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 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 Section 1468.

15.4 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.

15.5 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.

15.6 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.

15.7 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.

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

15.9 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.

15.10 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.

15.11 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

15.12 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.

15.13 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.

15.14 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.

15.15 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.

15.16 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.

15.17 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, its successors and assigns, in the event of any Default by City, or for any amount, which may become due to Developer, its successors and assigns, under this Agreement.

15.18 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 as to form:

DENNIS J. HERRERA, City Attorney

By:

Charles Sullivan
Deputy City Attorney

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: _____

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco ("**SFMTA**") has reviewed the Development Agreement (the "**Development Agreement**") between the City and KR Flower Mart LLC, a Delaware limited liability company ("**Developer**") to which this Consent to Development Agreement (this "**SFMTA Consent**") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA CPE and Addendum, including the MMRP, consented to and agrees to be bound by the Development Agreement as it relates to matters under the SFMTA's jurisdiction, including the Transportation Demand Management Program.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
Edward D. Reiskin, Director of Transportation

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

San Francisco Municipal Transportation Agency Board of Directors
Resolution No. _____
Adopted: _____, 2019

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)

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.

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Signature

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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 _____

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 _____

Development Agreement

The Flower Mart Project

San Francisco Board of Supervisors

December 9, 2019

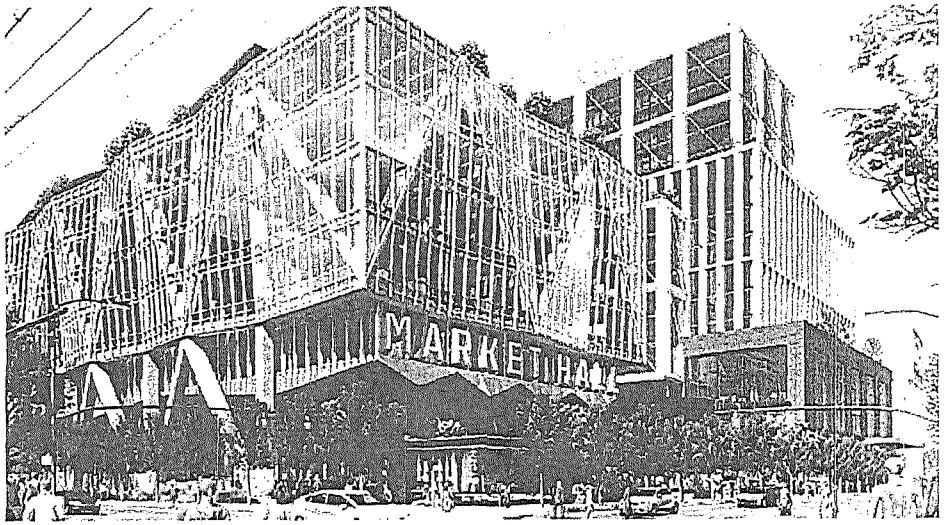
SAN FRANCISCO
Office of Economic and Workforce Development

Key Components

- The need for two scenarios in the DA.
- The requirements for Kilroy to construct a new permanent facility and relocate the Flower Mart in Scenario B
- Community Benefits and Development Impact Fees
- Establishing future priority Prop M allocation in 2021

FLOWER MART AKA. 610-690 BRANNAN STREET

- Office Use: 2,032,165 gsf
- Other Uses:
  - PDR/Flower Mart - 115,000 gsf
  - Retail – 83,459 gsf
- Community Benefits:
  - Open Space (145,000 gsf, including 35,450 gsf POPOS; 8,125 gsf in Market Hall; 5,193 gsf Off-Site)
  - Retention & Significant Upgrade of San Francisco Flower Mart
  - Enhanced Workforce Program
  - Affordable Housing Land Dedication (14,000 sf) for Gateway Building
  - Below Market Rate PDR



  - Child Care (Fee or On-Site of 10,185 gsf or Combo)
  - LEED Platinum

1887

San Francisco Planning

Why do we need two scenarios?

- Increased density along with proposed road diet could result in challenges for vehicle intensive reality of operating a major wholesale flower distribution business.
- The Flower mart is made up of over 50 independent, mostly family owned small business owners who in turn accommodate 4,000 small and large businesses across all of northern California on a weekly basis.
- Rely on easy circulation and adjacent access to the mart's warehouse.

1888

FlowerMart Development Agreement - Scenario A

Flower Vendors Elect to Return to Fifth and Brannan

- 115,000 square feet of on-site affordable PDR space
- 100,000 square feet of on-site neighborhood serving retail
- 15,000 square foot land dedication for 100% Affordable housing
- 36,000 square feet on-site privately owned public open space
- 5,000 square feet off-site public open space
- Enhanced workforce and job training for both PDR & Office
- 500 bike parking spaces
- $5million contribution to Sunnydale Hub project
- $2million contribution to CSOMA safer & cleaner streets
- $300,000 contribution toward Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District
- $4million in public art (in addition to 1% art's fee)
- $210 million in impact fees including $107 million in jobs housing linkage fees, which will result in the construction of nearly 500 units of permanently affordable housing.

SAN FRANCISCO
Office of Economic and Workforce Development

Scenario B
FlowerMart Election

Scenario B is triggered if the Flowermart elects not to return to Brannan Street. The flower vendors will have 30 days after DA is fully executed to make the election to stay or move.

1890

SAN FRANCISCO
Office of Economic and Workforce Development

FlowerMart Development Agreement - Scenario B

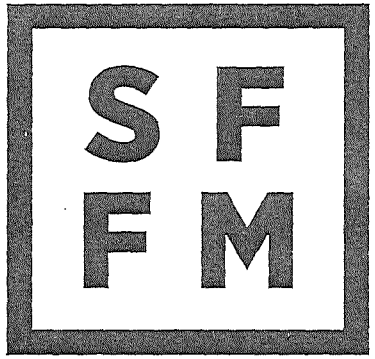
Flower Vendors Elect Alternative Permanent Location

- 115,000 square feet of off-site affordable PDR space
- 100,000 square feet of on-site neighborhood serving retail
- 15,000 square foot land dedication for 100% Affordable housing
- 36,000 square feet on-site privately owned public open space
- 5,000 square feet off-site public open space
- Enhanced workforce and job training for both PDR & Office
- 500 bike parking spaces
- $5million contribution to the Sunnydale Hub project
- $2million contribution to CSOMA safe and clean streets
- $300,000 contribution toward Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District
- $4million public art (in addition to 1% art's fee)
- $210 million in impact fees including $107 million in jobs housing linkage fees, resulting in nearly 500 units of permanently affordable housing.
- PLUS: 23,000 square foot on-site affordable childcare facility
- 1,000 square foot on-site community space
- On-site programming for neighborhood organizations, including job fairs, floral shows, farmer's market and other community programs

Thank you

1892

SAN FRANCISCO
Office of Economic and Workforce Development



SAN FRANCISCO FLOWER MART

BOARD OF SUPERVISORS
LAND USE AND TRANSPORTATION COMMITTEE HEARING

DECEMBER 9, 2019

San Francisco Flower Mart Project

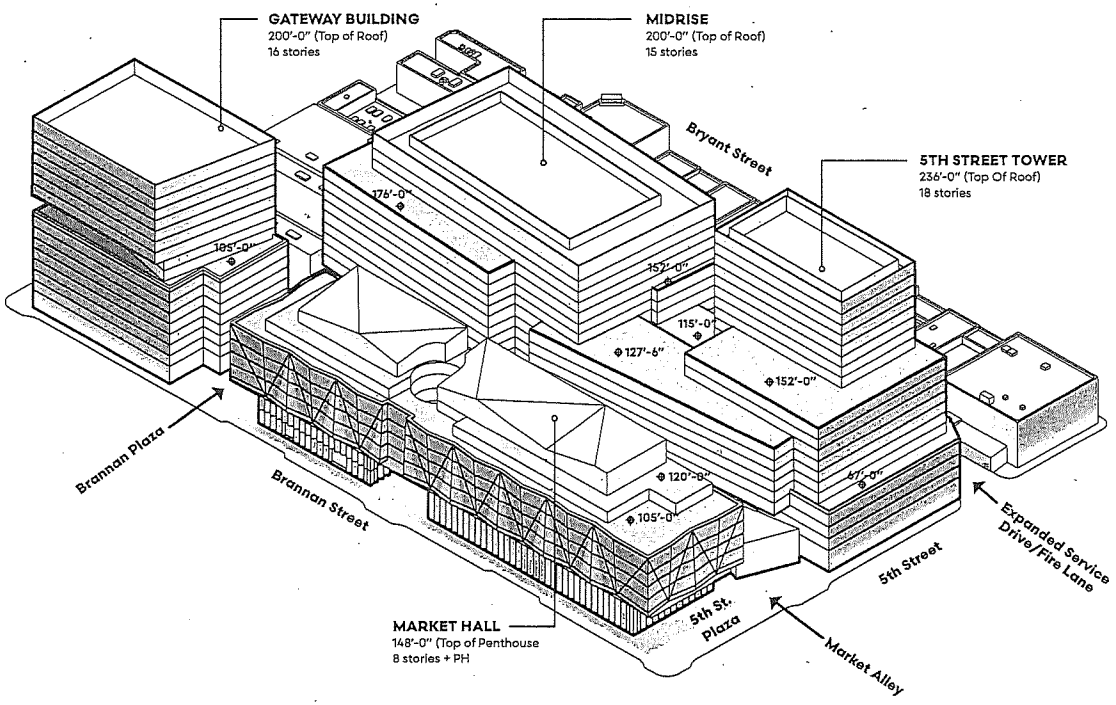
PROJECT DESCRIPTION

PARCEL	BLOCK 3778 LOT 1B, 2B, 4, 5, 47, 48
LOT AREA	286,368 SF 6.57 acres
EXISTING USES	Wholesale Flower Market + Surface Parking
	Lot 47 (Vacant) 27,088 sf
PROPOSED USE	Wholesale Flower Market, Retail, Office, & Underground Garage Parking
USE DISTRICT	CMUO / MUR
SPECIAL USE DISTRICTS	Central SOMA
HEIGHT / BULK	270-CS / 160-CS
OCCUPANCIES	A-2 Restaurant + Bar, A-3 Terraces, A-5 Bleacher, B Office, M Market + Retail
CONSTRUCTION TYPE	Type 1A, Fully sprinklered All new construction

The project site is located in San Francisco's South of Market (SoMa) District on Assessor's Block 3778, which is bounded by Fifth Street to the north, Brannan Street to the east, Sixth Street to the south, and Bryant Street to the west, and within the recently adopted Central SoMa Special Use District.

The San Francisco Flower Mart Project ("Project") would include the demolition of all the existing buildings on the project site, including the Existing Wholesale Flower Market, the surface parking lot, and additional vacant buildings. The Project would include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing 2,032,165 gross square feet of office space, 83,460 gross square feet of retail space (including 10,000 rentable square feet of flower retail space), and a new wholesale flower market consisting of 115,000 rentable square feet of flower vendor space plus adjacent at-grade and below-grade loading areas ("New Wholesale Flower Market"). The Market Hall Building would front Brannan Street and be approximately 148 feet tall. The Blocks Building would be north of the Market Hall Building and range from approximately 200 to 236 feet in height. The Gateway Building would rise to 200 feet on the corner of Sixth and Brannan streets.

The Project would also include 145,000 square feet of public and private open space. Of this, 31,450 square feet of POPOS is to be provided at street level, including 8,125 square feet under the Market Hall Building's cantilevered ends. An additional 5,200 square feet will be provided off site. The remaining open space would includ 36,000 square feet of living roof and multip tenant terraces.



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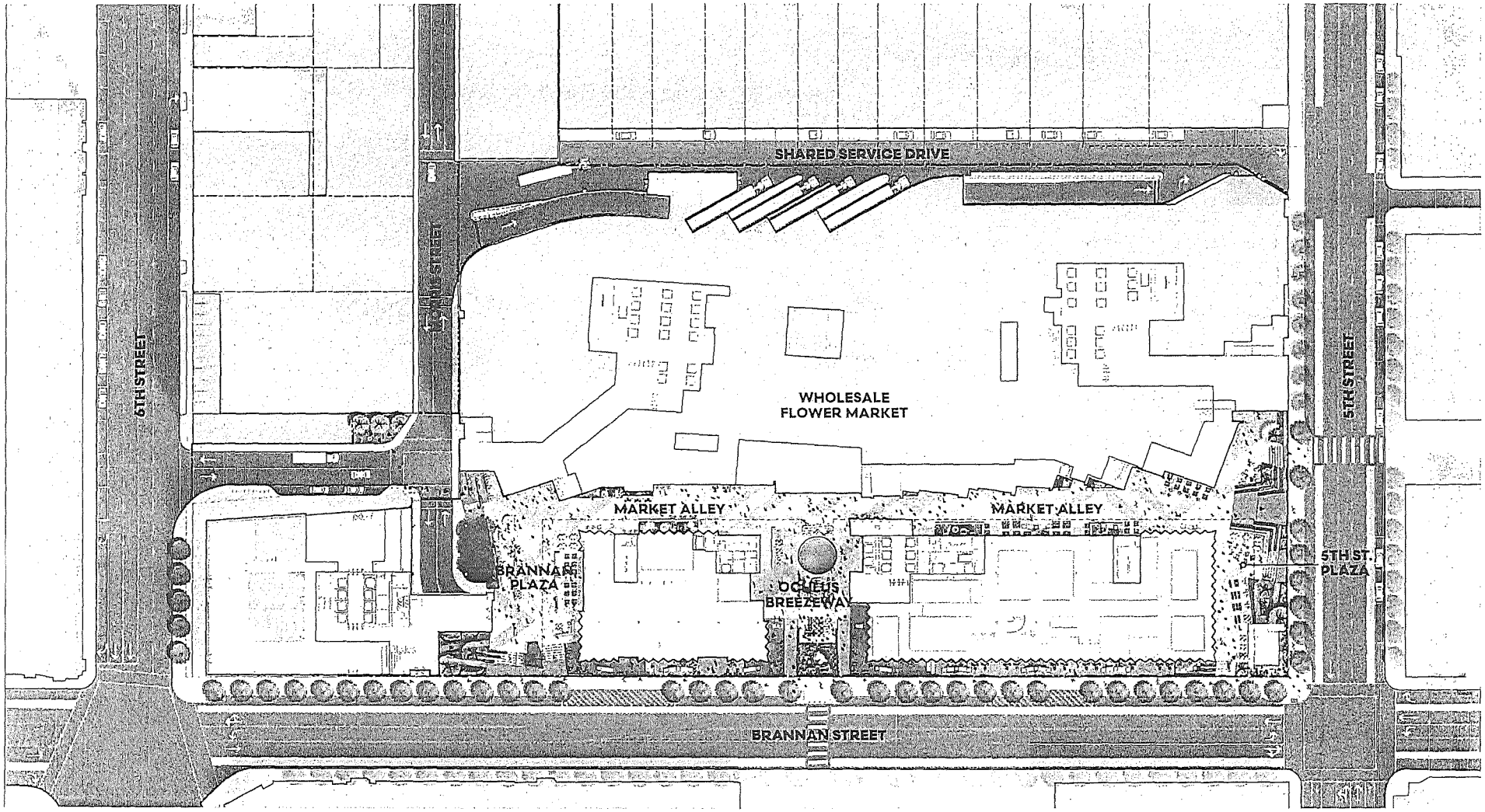

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ILLUSTRATED SITE PLAN

Scale: 1" = 80'-0"

North

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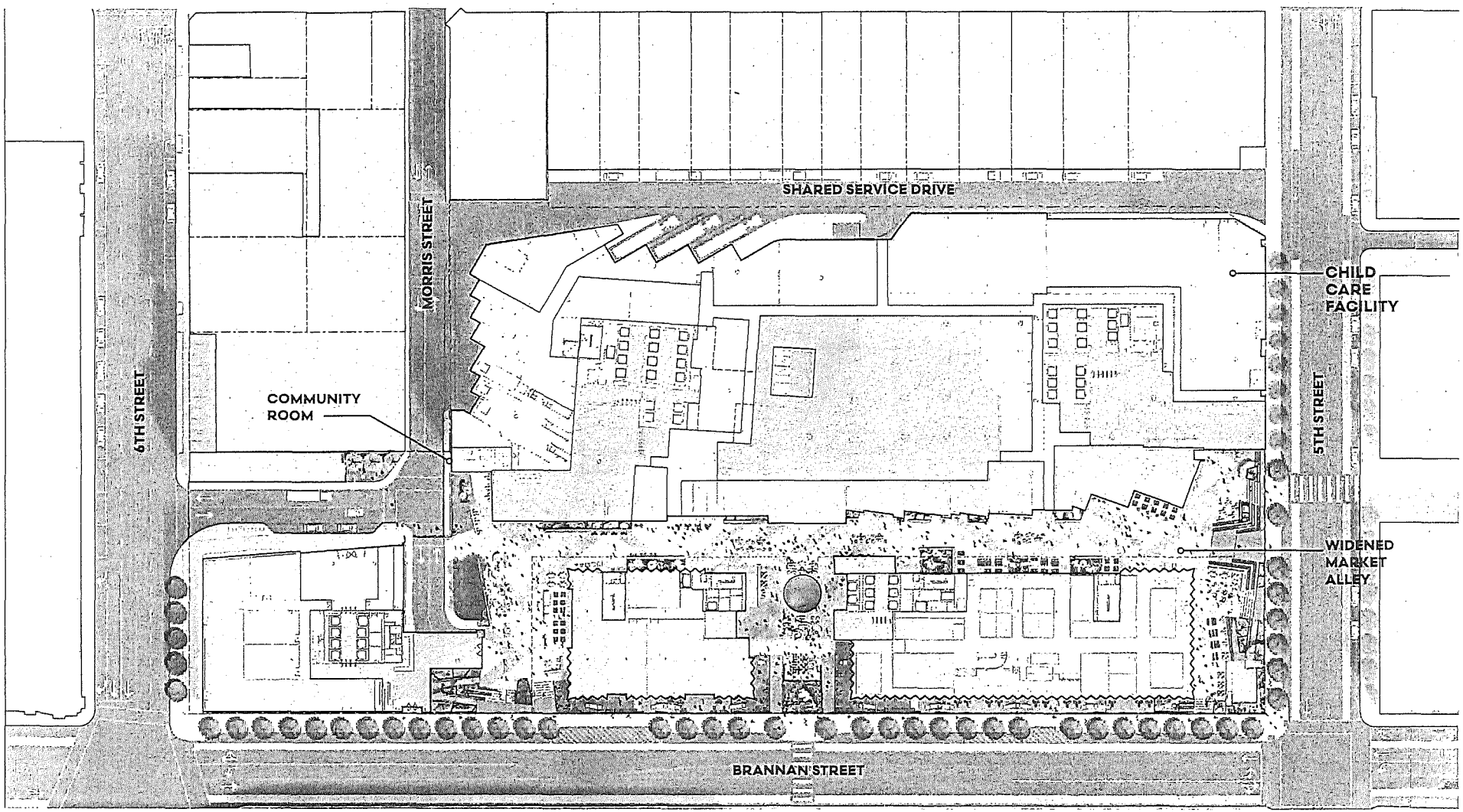

1896

PROJECT VARIANT - PROJECT WITHOUT WHOLESALE FLOWER MART

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San Francisco Flower Mart

Fiscal & Economic Benefits

$39.2 million in direct annual tax revenue for the City/County of San Francisco, incl.:

- » **$29.9 million** annual revenue for the General Fund
- » **$9.3 million** annual revenue for non-General Fund uses

$231.2 million in direct, one-time construction-related revenue for the City, incl.:

- » **$222 million** in fees, incl. **$110M** for affordable housing and **$49M** for transportation
- » **$9.2 million** in gross receipts and sales tax revenue

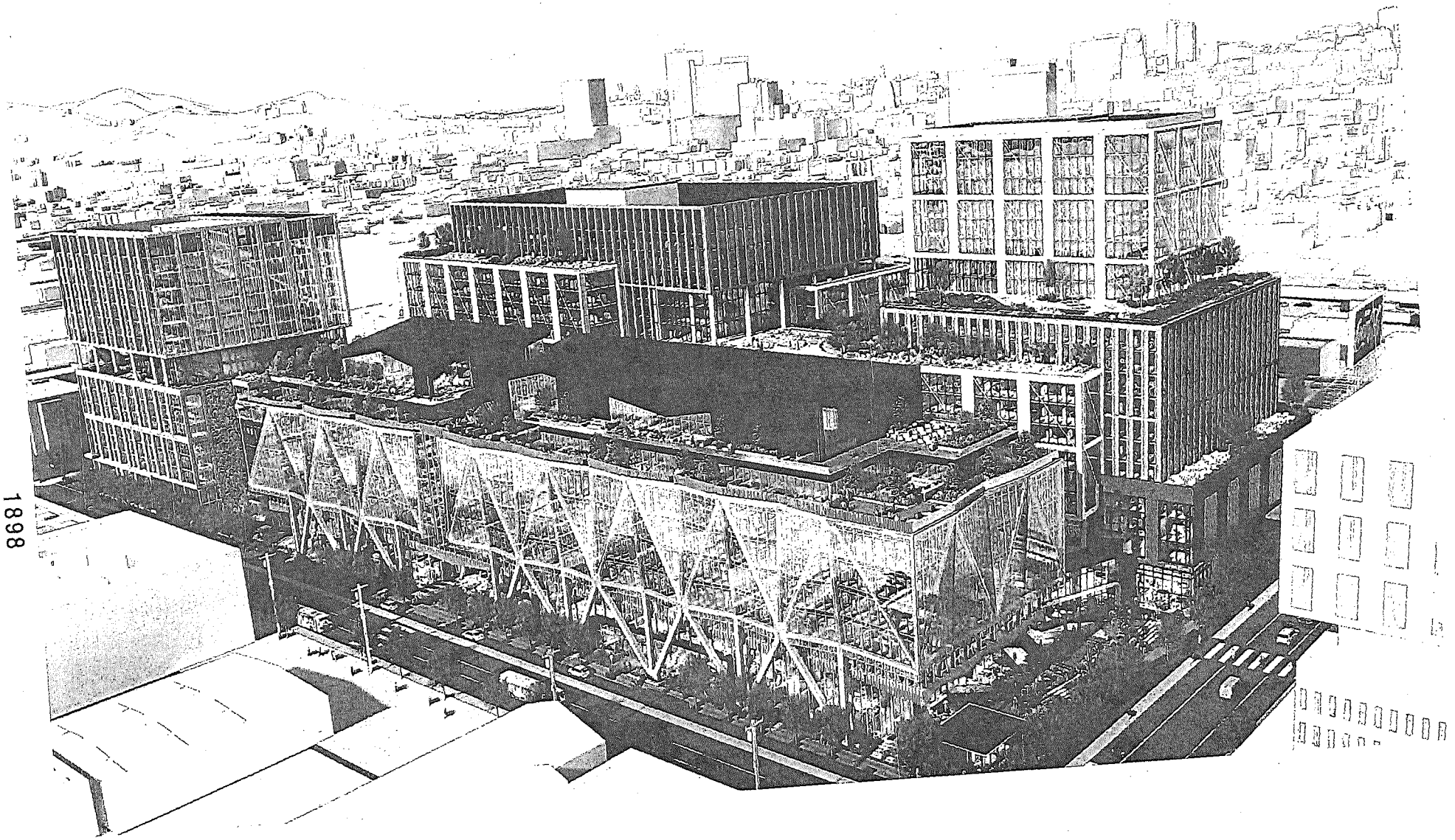
$20 million construction of new wholesale flower market

8,050 annual construction-related jobs, with economic output totaling **$1.5 billion** during construction period (2020-2023)

KILROY

Public Benefits

- **$100 million** for **115,000 SF** affordable PDR (includes interim market)
- **$50 million** for **100,000 SF** neighborhood-serving retail & market hall
- **$8 million** for **14,000 SF** off-site land dedication to the City for 100% affordable housing (up to 100+ units)
- **$5 million** donation to the Sunnydale Community Center Project
- **$2 million** donation to support the SoMa street cleaning initiative
- **$5 million** for **22,000 SF** child care center (or in-lieu fee)
- **$500 million** through **enhanced workforce program**
  - » Local Business Enterprise Utilization Program
  - » Permanent workforce program for local residents
- **$20 million** for privately-owned public open space
  - » **Programming of 36,000 SF on-site,** incl. artisan/farmers markets, floral shows, job fairs
  - » **5,000 SF** off-site neighborhood public open space
- **$1 million** for **1,000 SF** community room for use by neighborhood organizations
- **$5 million** for **500** bike parking spaces and shower/locker facilities and **30** car-share and vanpool spaces
- **$25 million** for **LEED Platinum** cert. and sea level rise safeguards
- **$4 million** in public art
- **$50 million** for enhanced deep foundations to bedrock for public safety during/after earthquakes
- **$7 million** for diverting rain/wastewater from public treatment systems



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PROJECT OVERVIEW

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190681
& 190682

REUBEN, JUNIUS & ROSE, LLP

December 4, 2019

Delivered Via Email and Messenger

Land Use & Transportation Committee
Chair Aaron Peskin (Aaron.Peskin@sfgov.org)
Supervisor Matt Haney (Matt.Haney@sfgov.org)
Supervisor Ahsha Safai (Ahsha.Safai@sfgov.org)
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, Ca 94102-468

Re: San Francisco Flower Mart Project
Development Agreement & Planning Code Amendments
BOS File Nos. 190682 & 190681

Dear Chair Peskin and Supervisors:

KR Flower Mart, LLC (the "**Project Sponsor**;" also Kilroy Realty Corporation or "**KRC**"), proposes a landmark project that would anchor the west end of Central SoMa with over 2,000,000 square feet of office, over 80,000 square feet of new neighborhood serving retail, and over 35,000 square feet of ground level POPOS. The Project Sponsor has been working with the Wholesale Flower Market vendors (the "**Vendors**") and the City on this Key Site development since early 2015.

Since the beginning of the process, the plan has been to build a new state-of-the-art Wholesale Flower Market as part of the project at 6th and Brannan, where it currently operates. At the end of last year, after working on and solving some additional design concerns, the Vendors told KRC that they appreciated all the work but are worried about the larger changes in the neighborhood. Their concerns are primarily related to how increased traffic will impact their wholesale business, which depends on vendors and customers having easy truck and vehicle access to the market. Over the past year, KRC has been working with the Vendors and the City to develop a 2-variant plan, which provides for projects with and without an on-site Wholesale Flower Market.

The 2-variant plan was approved by the Planning Commission on July 28, 2019, and allows the Wholesale Flower Market Vendors to decide whether to return to the current site at 6th and Brannan, or whether to relocate to a new permanent location elsewhere. Per the most recent discussions with the Vendors, if the Vendors choose to stay, KRC will build a new market on site. If they choose to move to an alternate site, KRC will construct a new market at an alternative site. The mechanics of this 2-variant plan are detailed in the Development Agreement before you today, which is designed to ensure that the Wholesale Flower Market has a new permanent home in San

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Francisco with guaranteed affordable rent. The related Planning Code and Zoning Map amendments further facilitate the construction of the Project at 6th and Brannan, as well as the potential construction of an interim Wholesale Flower Market at 2000 Marin Street.

A. Project and Project Variant Descriptions

The property at 610-698 Brannan Street consists of Assessor's Block 3778, Lots 1B, 2B, 4, 5, 47 and 48. These lots comprise the 286,368 square foot (6.57 acres) lot (the "**Property**" or "**Project Site**") bounded by Fifth Street to the north, Brannan Street to the east, Sixth Street to the south, and Bryant Street to the west, and is identified as a Key Site under the Central SoMa Plan (also the "**Plan**").

The Project Sponsor proposes to construct three new buildings at the Property (the Blocks, Market Hall, and Gateway Buildings), consisting of 2,032,165 square feet of office space, 83,459 square feet of retail space, and a new Wholesale Flower Market (the "**Project**"). The Project will also include 35,450 square feet of ground level on-site POPOS, including a new mid-block pedestrian alley linking 5th and 6th Streets. An additional 5,193 square feet of POPOS will be provided off site, either under or adjacent to the I-80 freeway.

The variant to the proposed Project—which would be constructed only if the Wholesale Flower Market vendors opt not to return to the Project Site—is essentially the same, but would involve reconfiguring the ground floor of the Blocks building to replace the Wholesale Flower Market with a 22,690 square foot childcare facility, a 950 square foot community room, and additional office and retail space (the "**Project Variant**"). The Project Variant would also include an additional 3,000 square feet of onsite POPOS.

B. Community Benefits

Both the Project and Project Variant would provide substantial public benefits, as outlined below and as guaranteed by the City's Code requirements and the Development Agreement:

1. Construction of a new Wholesale Flower Market. If the Vendors opt to return to 6th and Brannan, then the Project will include a new, modern, and efficient Wholesale Flower Market with sufficient loading and parking, at below market rates, as set forth in part in the Development Agreement and in the Tri-Party Agreement between the Vendors, San Francisco Flower Mart LLC ("**SFFM**," the master tenant), and KRC and the Post-Development Lease between SFFM and KRC. If the Vendors decide to relocate, then the Project Sponsor will construct a permanent off-site facility at an alternative permanent site for the Vendors. In both cases, the Project would ensure the continued operation of the Wholesale Flower Market within San Francisco—keeping this 100+ year old institution and its 275 PDR jobs alive in the City. The Project Sponsor will relocate the Vendors to an interim site for the duration of the construction of the permanent site, and in the event the Vendors choose not to come back to 6th and Brannan, the Project Sponsor may also skip the temporary relocation and instead locate the Vendors directly to the permanent off-site facility.

2. **Affordable housing site.** The Project Sponsor will purchase and dedicate a minimum 14,000-square-foot site to the City for the construction of affordable housing in exchange for the Gateway Building being developed as an office project. The dedicated site would be located within the boundaries of the Central SoMa, Eastern SoMa, or Western SoMa Area Plans, and would be dedicated prior to receiving the first certificate of occupancy for the Project.

3. **$5 million donation to Sunnydale Hub Project.** The Project sponsor will donate $5 million to Mercy Housing California, for costs related to the Sunnydale Hub project.

4. **SoMa Pilipinas Cultural District contribution.** The Project Sponsor will fund and construct an arch, monument, pillar or other physical marker along 6th Street, between Brannan and Bryant Streets, which will serve as an identifying gateway to the San Francisco Filipino Cultural Heritage District. The marker would be based on a design to be developed by SoMa Pilipinas, with funding allocated from KRC's Eastern Neighborhoods infrastructure impact fee payments.

5. **On-site child care facility.** In the Project Variant scenario, KRC will construct a 23,000 square foot subsidized child care facility on the ground floor of the Blocks Building along 5th Street. The child care facility will include 8,300 square feet of dedicated, secure, outdoor play space.

6. **Enhanced workforce program.** The Project Sponsor will implement an enhanced workforce program, including working with the Contract Monitoring Division of the City Administrator's Office to implement: (1) a Local Business Enterprise (LBE) Utilization Program for design and construction contracts related to the development of the Project; and (2) a permanent workforce program to provide enhanced opportunities for local residents for employment with the future tenants of the Project.

7. **Payment of over $210,000,000 in development impact fees.** These fees will go to the benefit of city services and affordable housing, including the Transportation Sustainability Fee, the Schools Fee, the Eastern Neighborhoods Infrastructure Impact Fee, the Jobs-Housing Linkage Fee, and the Central SoMa Community Facility Services Fee. The Project or Project Variant will also pay the new Central SoMa Community Facilities District Tax, which will contribute to financing transit investments, street and environmental improvements, and development and maintenance of parks and recreation centers.

8. **Dedication of $4,000,000 to public art.** The Project Sponsor will dedicate the equivalent of 1% of construction costs to public art. Based on an estimated construction cost of $400,000,000, the Project/Project Variant would include $4,000,000 public art. The art program has not been finalized but will include a sculptural art piece located near the center of Brannan Plaza that will also serve as a children's play structure.

9. On-site community room. In the Project Variant scenario, the ground floor of the Blocks Building would include an approximately 1,000 square foot community room, (located on Morris Street behind the Brannan Street lobby of the Blocks Building), available for SoMa community groups at low rates. The community room also includes a small amount of office space, which would be made available for use by SoMa Pilipinas.

10. Addition of up to 38,450 sf of on-site at grade POPOS. New POPOS at the Property will include an active mid-block Market Alley which will create a pedestrian connection between 5th and 6th Streets. The Market Alley will be linked to Brannan Street via two POPOS plazas—the 5th Street Plaza on the east end of the Market Hall and the Brannan Plaza on the west end of the Market Hall. The plazas will feature drinking fountains, access to public restrooms within the Market Hall, and moveable furniture. The large flexible spaces are designed to accommodate programming including farmers markets, concerts, and the SoMa Pilipinas Night Market. In addition to the on-site POPOS, 2,778-5,193 square feet of off-site POPOS would be provided as public recreation space under or adjacent to the I-80 freeway.

11. Addition of up to 90,976 square feet of new retail. The Project will provide 83,459-90,976 square feet of new street-level retail space, including 10,000 square feet dedicated to the Flower Market, if the Vendors opt to return to the Project Site. The retail would also include a Market Hall at the corner of 5th and Brannan Streets that will provide space for up to 20 micro-retailers. Up to two of those retail stalls (300-500 square feet each) would be set aside for retail and entrepreneurship training opportunities for local community groups.

12. $14 million in streetscape improvements & public infrastructure. With frontages on Brannan, 5th, and 6th Streets, the Project or Project Variant will provide for substantial streetscape improvements on the block. These improvements will include traffic signals, transit stop improvements, crosswalks and pedestrian safety treatments, improved parking and loading zones, and other streetscape improvements including enhanced lighting, stormwater treatment features, street trees and plantings, and street furniture including new bike parking racks.

13. Green building measures. The Project will provide a number of green building features. It will meet LEED Platinum building standards and provide living roofs throughout the project with plant life that will support pollinators. The Project will also take advantage of the considerable number of living roofs and terraces to develop an integrated stormwater management and treatment system. Various energy saving measures are being planned and studied, including solar ready roofs, expansion capacity for electric vehicle charging stations, and high efficiency MEP systems. Finally, the design team is studying sustainable material options and strategies for reducing the impact of the use of materials on the project and improving indoor air quality.

14. Robust TDM program. TDM measures incorporated into the Project or Project Variant will include the addition of up to 410 Class 1 and 86 Class 2 bike parking spaces and for the Project Variant, up to 516 Class 1 spaces (at 125% the Code requirement) and 92 Class 2 spaces. The Project or Project Variant will include up to 18 showers and 103 clothes lockers, an

on-site bike repair station, up to 15 car share spaces and 12 vanpool spaces, tailored transportation marketing services, and the provision of delivery supportive amenities and delivery services.

15. Annual $200,000 street cleaning support. As part of the Project or Project Variant, KRC will contribute $200,000 a year for 10 years (for a total of $2 million) to support street cleaning efforts in SoMa.

C. Flower Market Optionality & Development Agreement

1. 2015 Tri-Party Agreement

On June 26, 2015, KRC entered into a Tri-Party Agreement (the "**TPA**") with the San Francisco Flower Mart Tenants Association (the "**Tenants**") and San Francisco Flower Mart LLC. The TPA requires that KRC entitle and construct a 125,000-square-foot new Wholesale Flower Market (including 10,000 square feet of accessory retail) at the Property, and relocate the existing Tenants to an interim location (the "**Interim Site**" or "**Temporary Site**") prior to commencing construction on the new Wholesale Flower Market. The TPA establishes certain construction parameters for both the Interim Wholesale Flower Market and for the permanent new Wholesale Flower Market.

Under the TPA, the Interim Site must be able to accommodate 115,000 gross square feet of wholesale space, or less, so long as the space is sufficient to accommodate all of the existing Tenants. As part of the TPA, the Tenants and the SFFM pre-approved 2000 Marin Street as a potential Interim Site, subject to KRC being able to lease such property in a timely manner.

2. Tenant Design Discussions

Towards the end of 2018, the Vendors raised additional concerns about the design and functionality of the new Wholesale Flower Market. The Project Sponsor incorporated several design changes, which go beyond the requirements of the TPA. These changes include:

- Adding tall van parking spaces and redesigning aspects of the basement to accommodate those spaces;
- Adding a pedestrian/cart entrance to the wholesale space on 5th Street;
- Expanding the at-grade loading dock spaces to accommodate the largest semi-trucks;
- Reducing the size of building service elements in the upper volume of the Wholesale Flower Market space; and
- Providing additional elevators for service between the basement parking levels and the ground floor Wholesale Flower Market space.

In addition to these changes, the Development Agreement incorporates a design requirements that KRC has agreed to include in either an interim Wholesale Flower Market or an alternative off-site market if the Vendors opt to relocate permanently.

3. Off-Site Flower Market Option

Late last year, the vendors asked KRC to consider providing funding for the construction of a new building off-site, in lieu of building a new Wholesale Flower Market on the Project Site. They expressed appreciation for the design changes and the preceding years of work, but many of the Vendors felt that the new Central SoMa neighborhood, where significant new road diets are proposed, along with major office and residential development, will not be accommodating to their wholesale operations, particularly with respect to large truck traffic.

In response to those concerns, KRC developed the Project Variant described above, which does not include a new Wholesale Flower Market at 6th and Brannan. The Planning Commission's approval of a 2-variant project provides optionality for the Vendors to decide which choice is best for their long-term success. If the Vendors choose to stay at the current site, KRC will build a new Wholesale Flower Market at the Property. If they choose to move, the KRC will build a new Wholesale Flower Market at an alternative permanent site. Either way, the Project Sponsor will ensure that the Wholesale Flower Market has a new permanent home in San Francisco at the same guaranteed affordable rents.

No final decision has been made by the Vendors as to whether they wish to stay at the site. This is why it is key to maintain the optionality of both scenarios. The Development Agreement preserves this optionality and establishes the procedure by which the Vendors could opt to permanently relocate, as well as the details for the construction of a permanent off-site facility if the option is exercised to move to an alternative site.

D. Planning Code Text and Zoning Map Amendments

On June 11, 2109, Supervisor Haney introduced an ordinance for Planning Code Text and Map Amendments to establish the 2000 Marin Street Special Use District and to create additional Key Site exceptions for the main Project Site, and amend Special Use District Map No. SU08 for the San Francisco Flower Mart Project.

The 2000 Marin Street SUD would facilitate the construction of an Interim Site for the Wholesale Flower Market at 2000 Marin Street, and would modify the Planning Code requirements for demolition of industrial buildings, streetscape improvements, building standards, vehicle and bicycle parking, transportation demand management and impact fees for a period of six years.

The Planning Code Text Amendments would also create additional Key Site exceptions for the Project Site. These amendments would modify the requirements for POPOS design, off street parking, ground floor transparency and fenestration, protected street frontages, PDR floor heights, overhead obstructions, off-site open space, parking pricing, residential to non-residential ratio, child-care facilities, PDR replacement, PDR and Community Building Space.

E. Outreach & Support

Since 2014, KRC has been meeting with dozens of critical community, citywide, and nonprofit organizations to ensure that those most affected are aware of the Project, when the Project would likely start and finish construction, and how the Project would change and benefit the neighborhood and the rest of SoMa. Key organizations that were updated on the Project include the SoMa Leadership Council, SoMa Pilipinas, TODCO, United Playaz, the Yerba Buena CBD, Yerba Buena Alliance, Rincon Hill Neighborhood Association, the South Beach Rincon Mission Bay Neighborhood Association, SF Bicycle Coalition, Walk SF, Livable City, SFHAC, YIMBY Action, and more. These conversations ranged from formal presentations to general membership to more intimate conversations with organizational leadership.

Over the past five years, KRC has provided these organizations with update emails as key elements of the Project evolved, and regularly offered update presentations and meetings to make sure all questions relating to the Project were answered. In addition, Kilroy has had several meetings with adjoining property owners, neighboring businesses, and Homeowners Associations to discuss construction planning and the project as a whole.

F. Conclusion

Since 2015, the Project Sponsor has been working with the City and the Wholesale Flower Market Vendors to develop this landmark Project that would anchor the west end of Central SoMa with office, over 80,000 square feet of retail, and over 35,000 square feet of ground level POPOS. The Project will include either a new state-of-the-art Wholesale Flower Market on site, provided at affordable rents; or, if the Vendors decide not to return to the current location, the Project Sponsor will construct a new Wholesale Flower Market at an alternative permanent location.

In addition to the new Wholesale Flower Market, the Project (or Project Variant) will provide an unparalleled public benefits package including: $39.2 million in direct annual tax revenue, at least $210 million in development impact fees, 8,050 annual construction related jobs during the construction period, dedication of an at least 14,000 square foot site for affordable housing, $5 million in funding for the Sunnydale Hub project, a 22,690 square foot child care center (or payment of the in lieu fee), an enhanced workforce program, $4 million dedicated to public art, and LEED Platinum certification.

Accordingly, we ask that you enable the Project Sponsor to provide this sweeping public benefits package and recommend that the Board of Supervisors approve the Development Agreement and the proposed Planning Code Amendments.

If you have any questions, please do not hesitate to call me at 415-567-9000.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP

Tuija Catalano

cc: Erica Major, Land Use and Transportation Committee Clerk (erica.major@sfgov.org)
Anne Taupier, OEWD (anne.taupier@sfgov.org)
Ken Rich, OEWD (ken.rich@sfgov.org)
John Rahaim, Planning Director
Mike Grisso, Project Sponsor
Alexandra Stoelzle, Project Sponsor
Daniel Frattin, RJR

1907

SAN FRANCISCO FLOWER MART

BOARD OF SUPERVISORS
LAND USE AND TRANSPORTATION COMMITTEE HEARING

DECEMBER 9, 2019

San Francisco Flower Mart Project

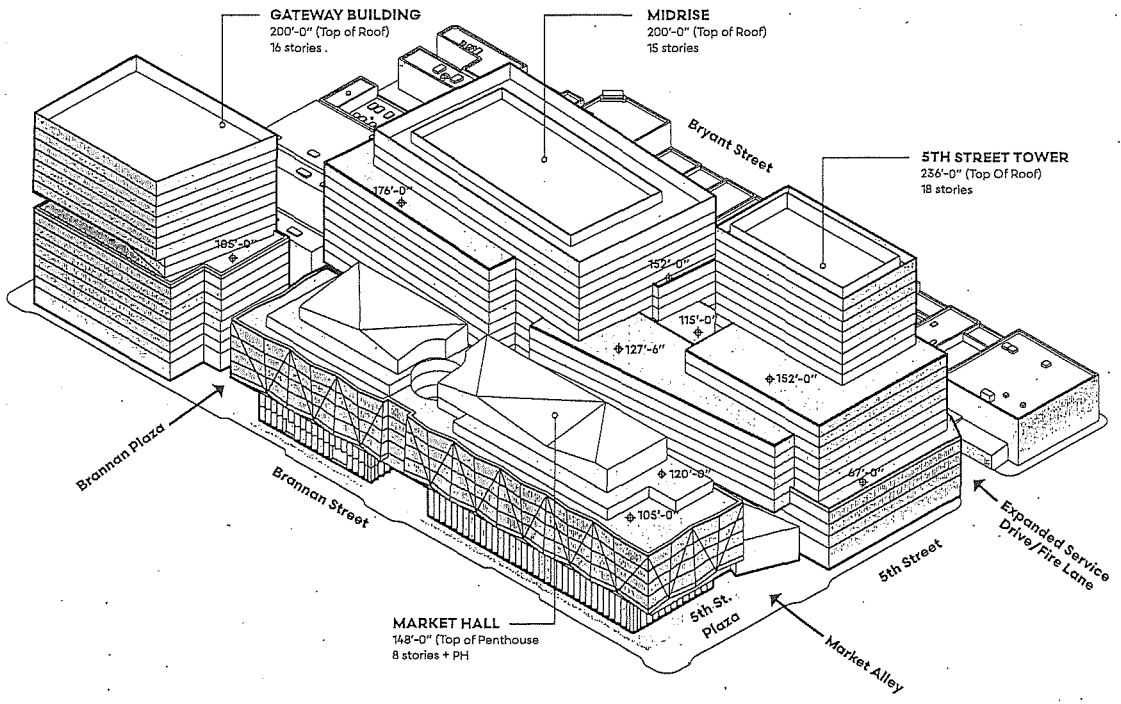
PROJECT DESCRIPTION

PARCEL	BLOCK 3778 LOT 1B, 2B, 4, 5, 47, 48
LOT AREA	286,368 SF 6.57 acres
EXISTING USES	Wholesale Flower Market + Surface Parking
	Lot 47 (Vacant) 27,088 sf
PROPOSED USE	Wholesale Flower Market, Retail, Office, & Underground Garage Parking
USE DISTRICT	CMUO / MUR
SPECIAL USE DISTRICTS	Central SOMA
HEIGHT / BULK	270-CS / 160-CS
OCCUPANCIES	A-2 Restaurant + Bar, A-3 Terraces, A-5 Bleacher, B Office, M Market + Retail
CONSTRUCTION TYPE	Type 1A, Fully sprinklered All new construction

The project site is located in San Francisco's South of Market (SoMa) District on Assessor's Block 3778, which is bounded by Fifth Street to the north, Brannan Street to the east, Sixth Street to the south, and Bryant Street to the west, and within the recently adopted Central SoMa Special Use District.

The San Francisco Flower Mart Project ("Project") would include the demolition of all the existing buildings on the project site, including the Existing Wholesale Flower Market, the surface parking lot, and additional vacant buildings. The Project would include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing 2,032,165 gross square feet of office space, 83,460 gross square feet of retail space (including 10,000 rentable square feet of flower retail space), and a new wholesale flower market consisting of 115,000 rentable square feet of flower vendor space plus adjacent at-grade and below-grade loading areas ("New Wholesale Flower Market"). The Market Hall Building would front Brannan Street and be approximately 148 feet tall. The Blocks Building would be north of the Market Hall Building and range from approximately 200 to 236 feet in height. The Gateway Building would rise to 200 feet on the corner of Sixth and Brannan streets.

The Project would also include 145,000 square feet of public and private open space. Of this, 31,450 square feet of POPOS is to be provided at street level, including 8,125 square feet under the Market Hall Building's cantilevered ends. An additional 5,200 square feet will be provided off site. The remaining open space would includ 36,000 square feet of living roof and multip tenant terraces.



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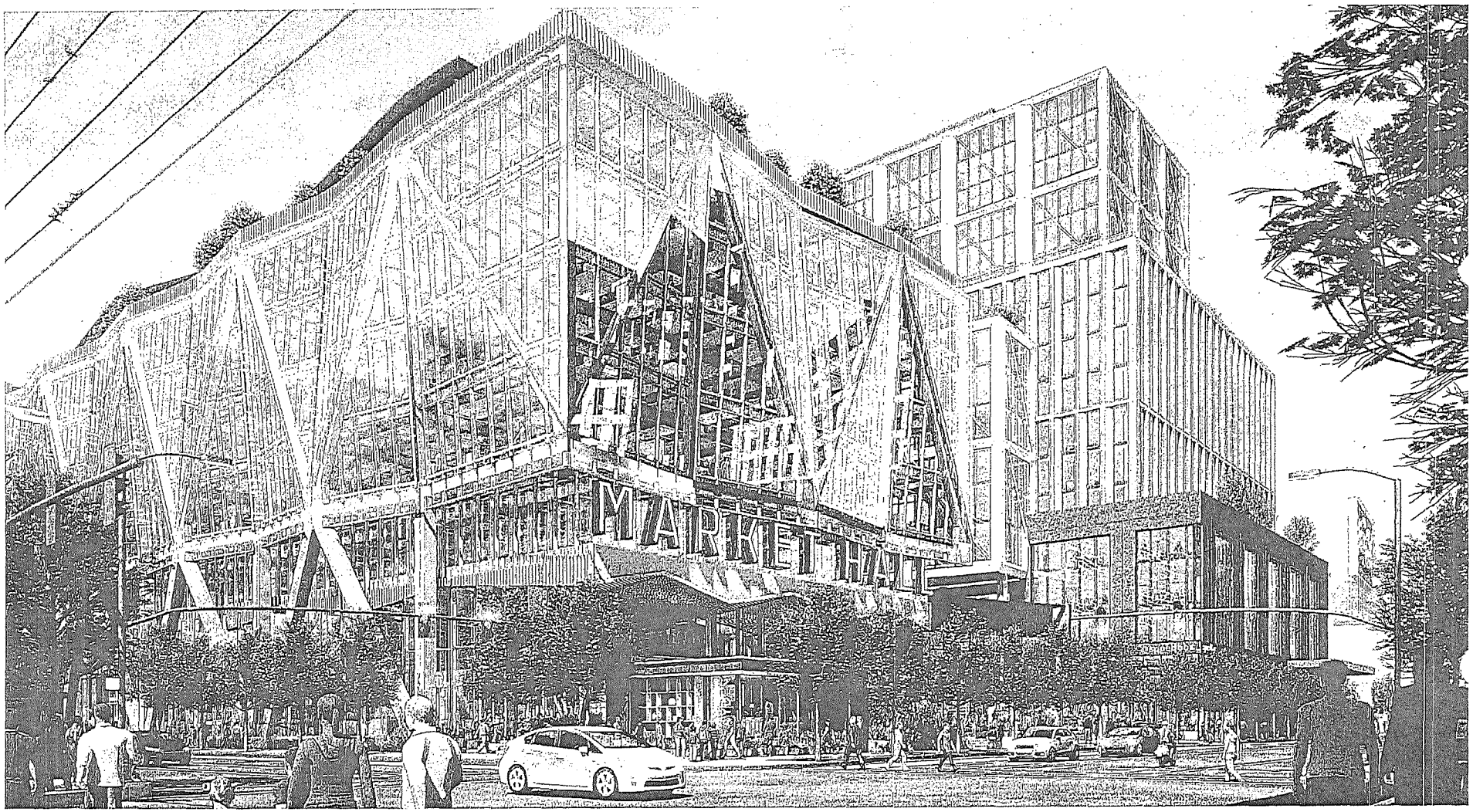
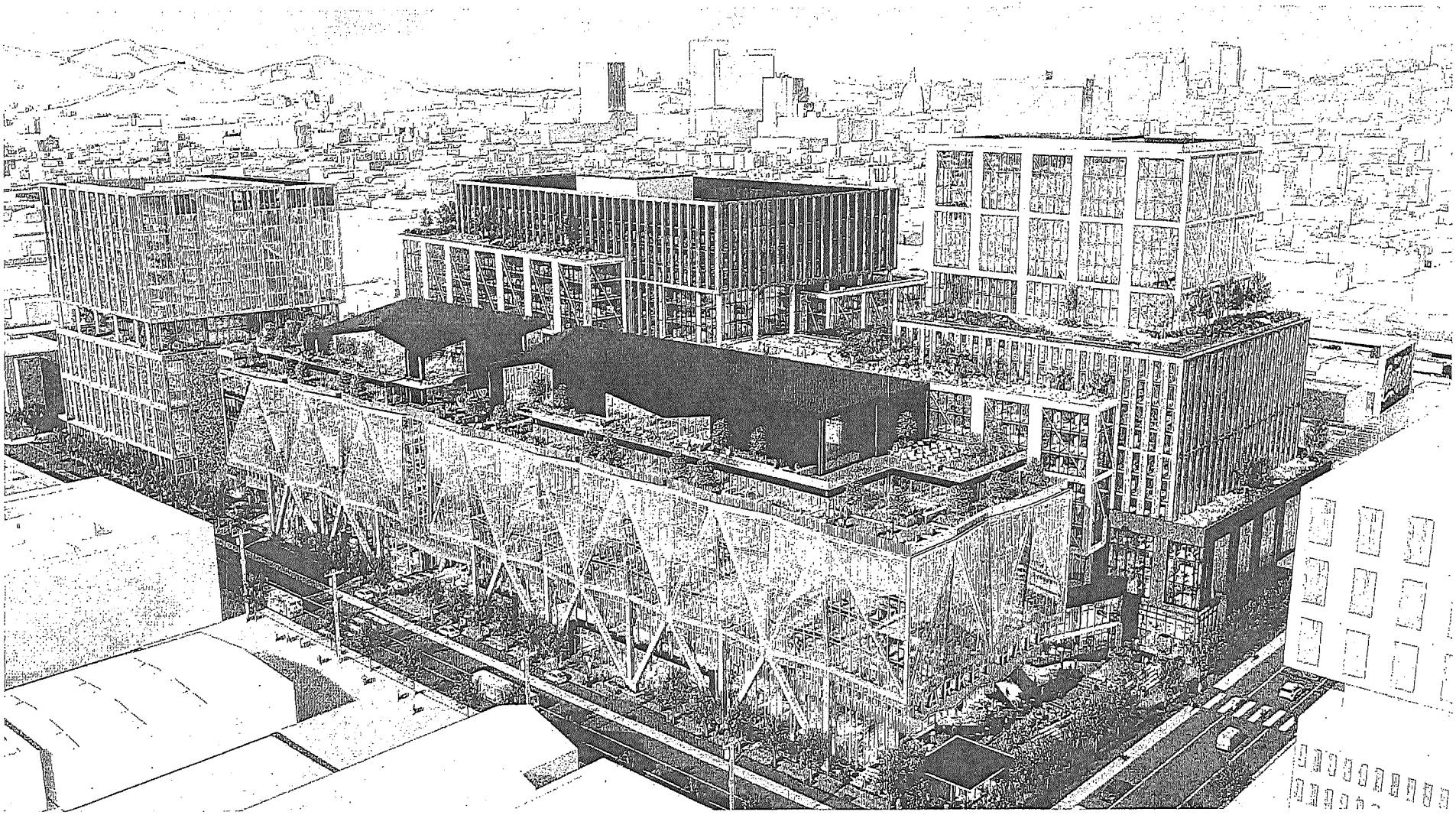
SF FLOWER MART 190810



VIEW FROM 5TH AND BRANNAN



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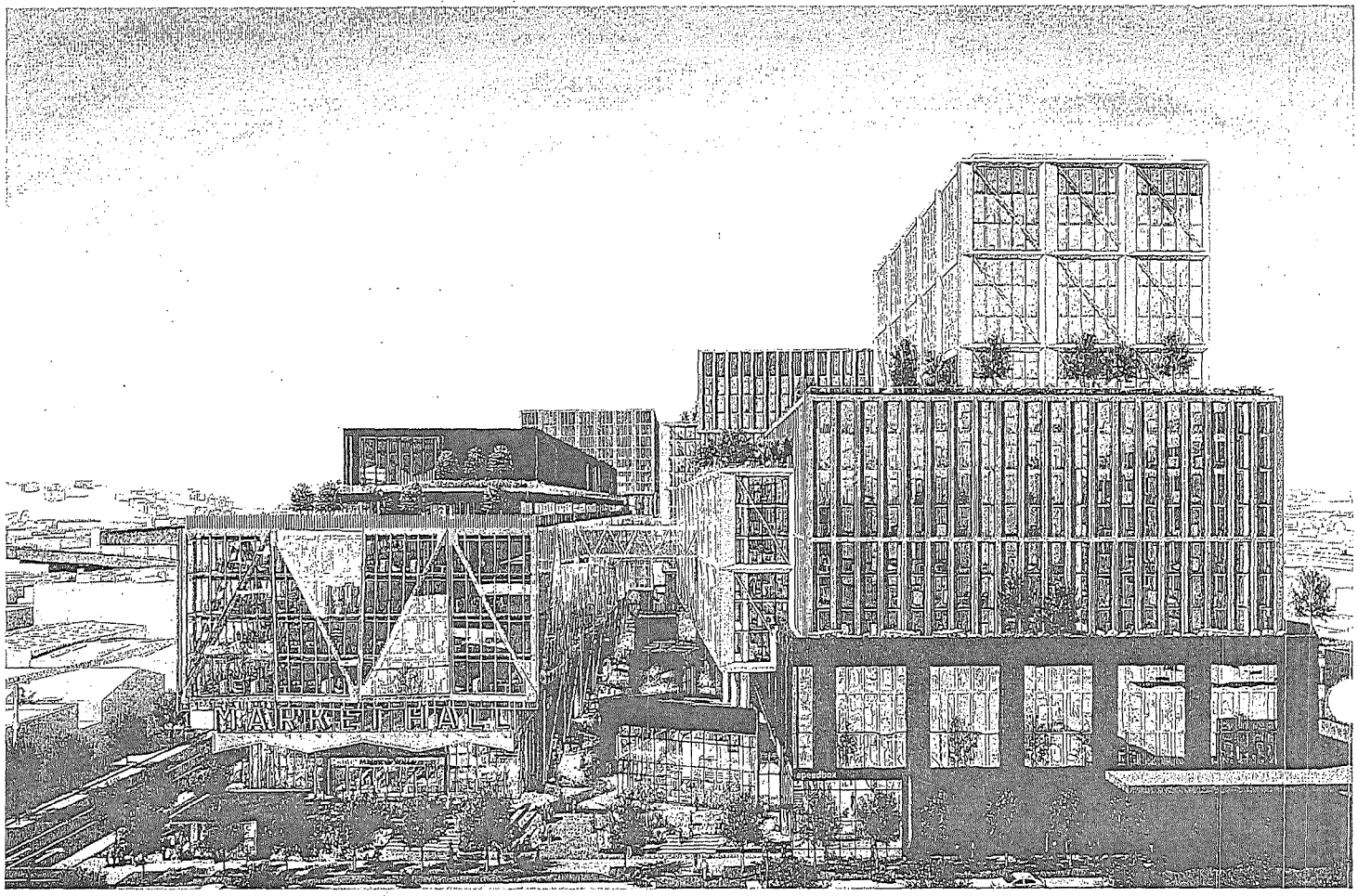
PROJECT OVERVIEW

DESIGN NARRATIVE

The San Francisco Flower Mart Project will include 145,000 square feet of public and private open space. Of this, 31,450 square feet of POPOS is to be provided at street level including 8,125 square feet under the Market Hall Building's cantilevered ends. An additional 5,200 square feet will be provided off site. The remaining open space would include 36,000 square feet of living roof and multiple tenant terraces.

The street level POPOS has been designed as a diverse and activated network of public plazas and passages. The intent is to create a series of distinct places throughout the site while relating it to the neighborhood fabric and to the site programs. The paving pattern will operate on two scales: a high-level modified chevron design and a looser and more granular human scale patterning of varying unit paver materials and colored tiles. The paving concept is derived from the patchwork of paving types that make up SoMa's streets, overlaid with a dusting of flower petals so frequently seen scattered around the ground at the current Wholesale Flower Market. Fixed seating and planting areas have been carefully planned to define gathering and seating spaces both within the plazas and along the street frontages, to both engage the urban fabric and create comfortable, easily accessible open spaces within the site. The plazas are flexibly designed to provide for special weekend programming such as farmers markets, concerts, and community events. The project sponsor is working with selected artists and art consultants to plan a robust art program that will be integrated throughout the street level public spaces.

Roof terraces are planned across all three of the Project's buildings. These terraces will include 36,000 sf of living roofs that will double as part of the storm water management system. The remaining terrace spaces will include occupiable roof decks to be fit out by future tenants.



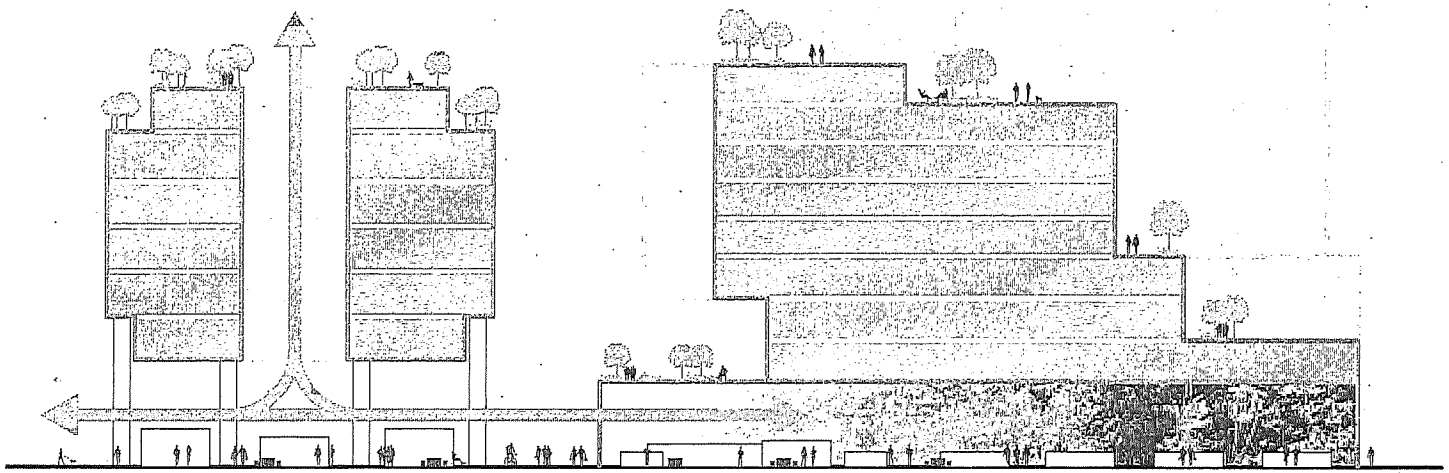
OVERALL RENDERING VIEW & DESIGN NARRATIVE

Scale: NOT TO SCALE

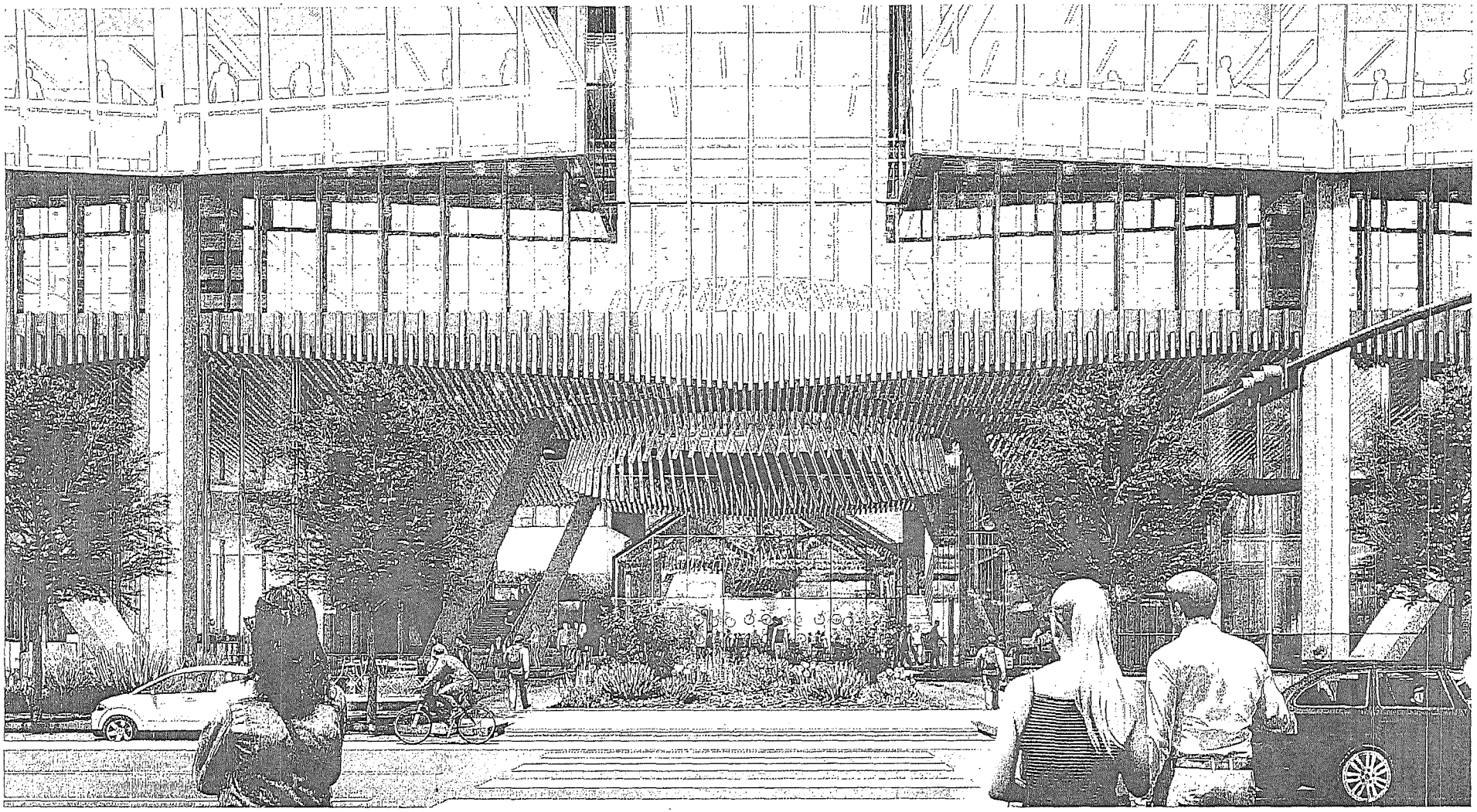
KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

1912

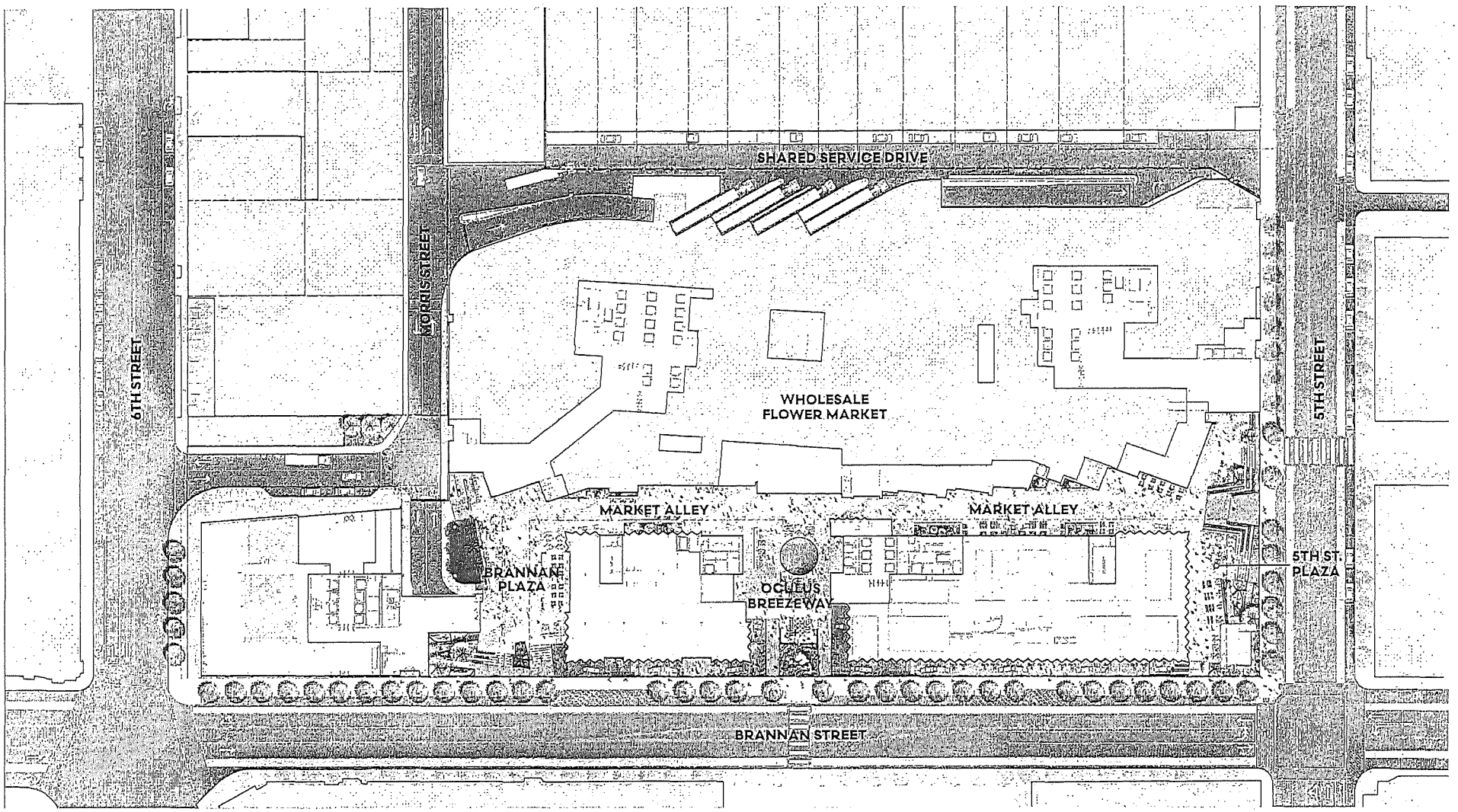


BUILDING STRATEGY DIAGRAM



1913

OCULUS BREEZEWAY AT BRANNAN STREET



1914

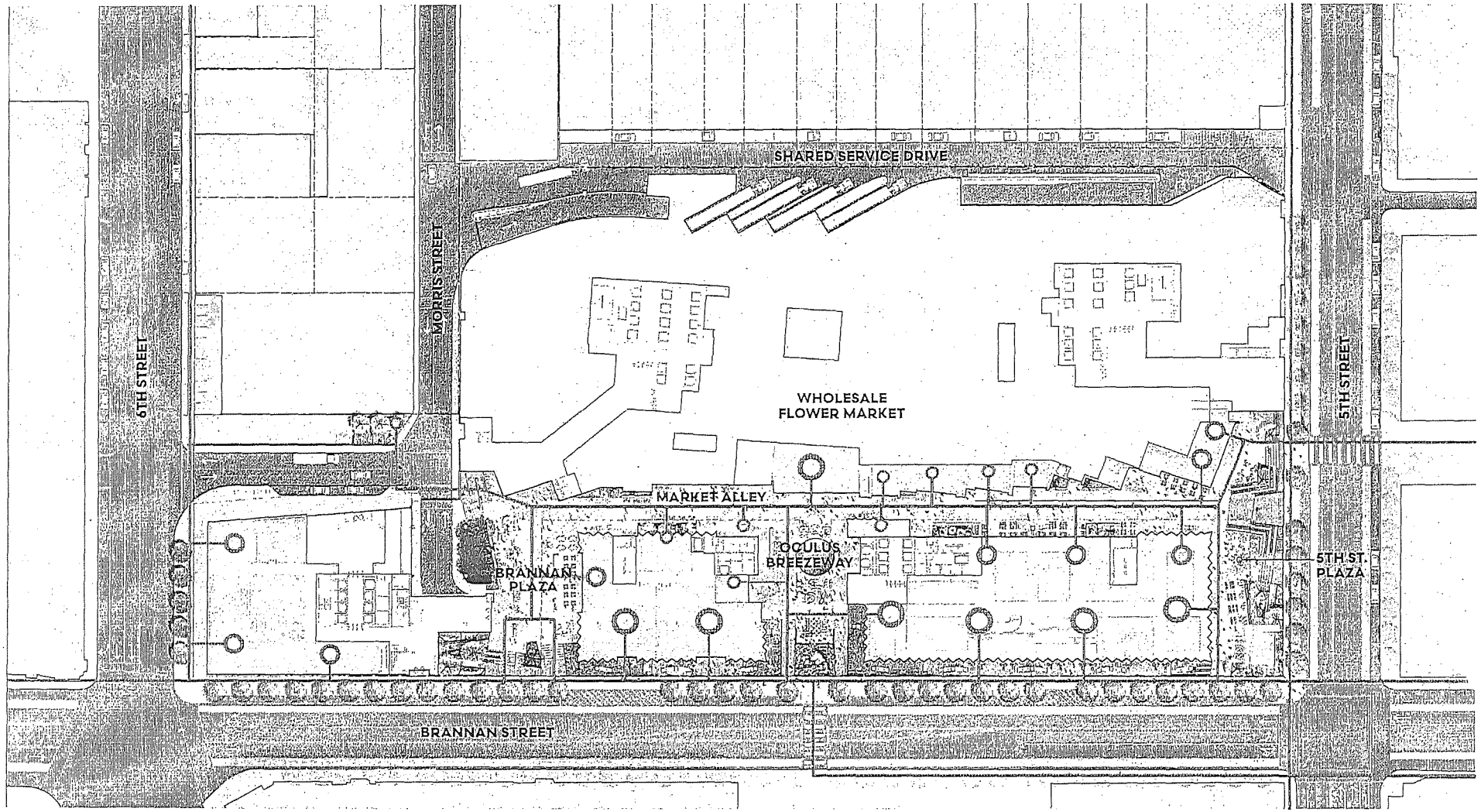
ILLUSTRATED SITE PLAN

Scale: 1" = 80'-0"

North

KILROY

adamson | RCH STUDIOS



1915

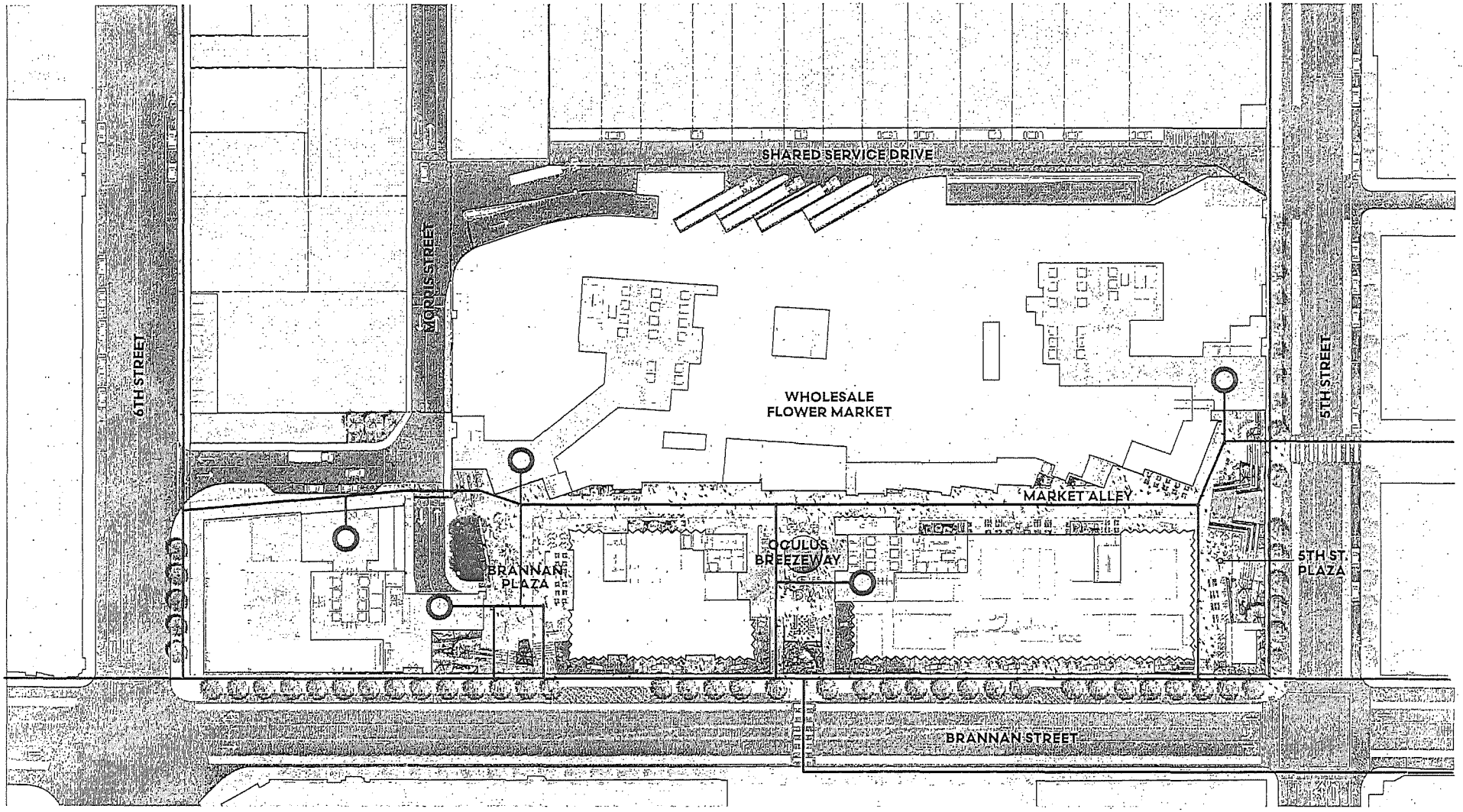
PROGRAM: RETAIL

Scale: 1" = 80'-0"

North

KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS



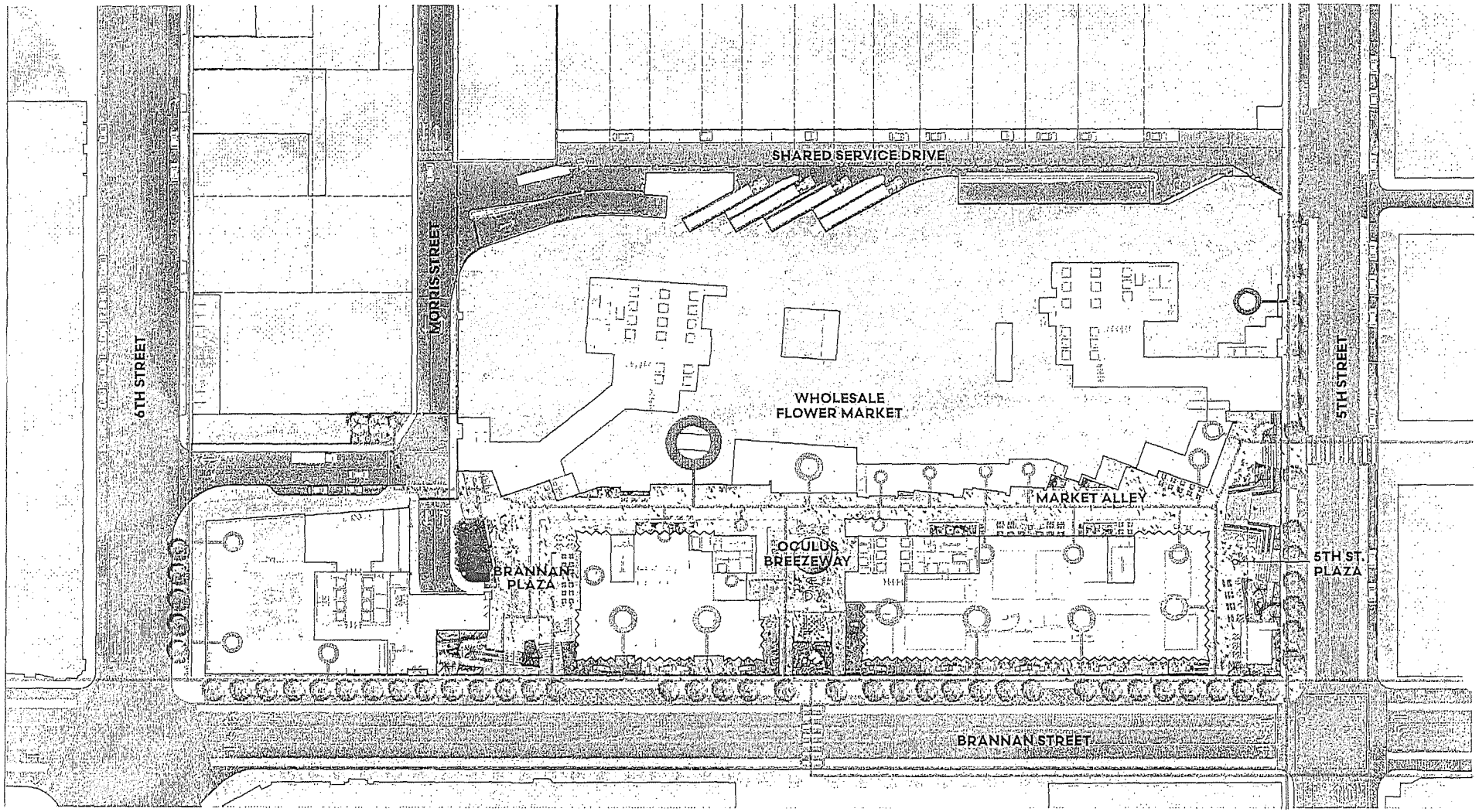
1916

PROGRAM: OFFICE

Scale: 1" = 80'-0"

North

KILROY



1917

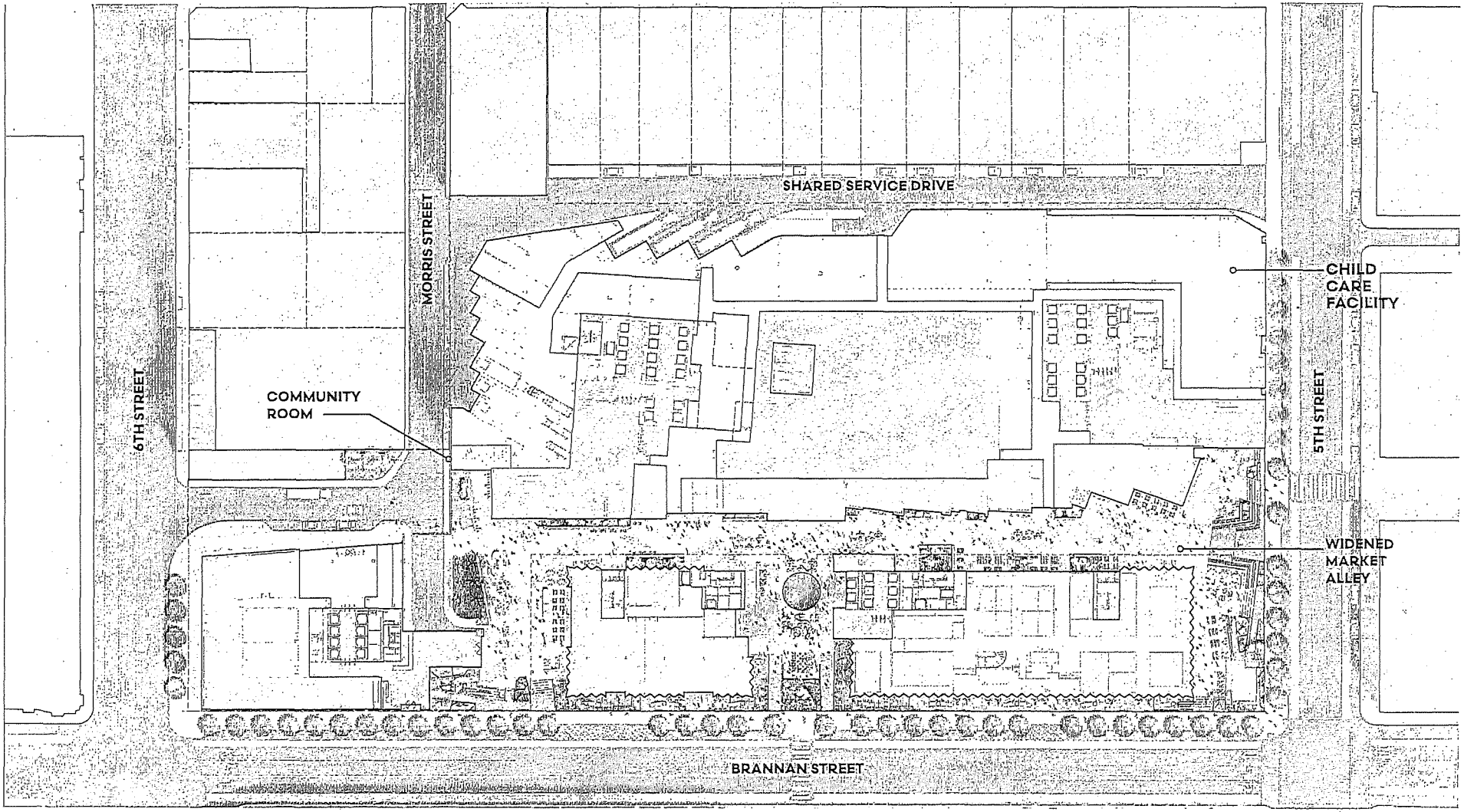
PROGRAM: SAN FRANCISCO WHOLESALE FLOWER MART

Scale: 1" = 80'-0"

North

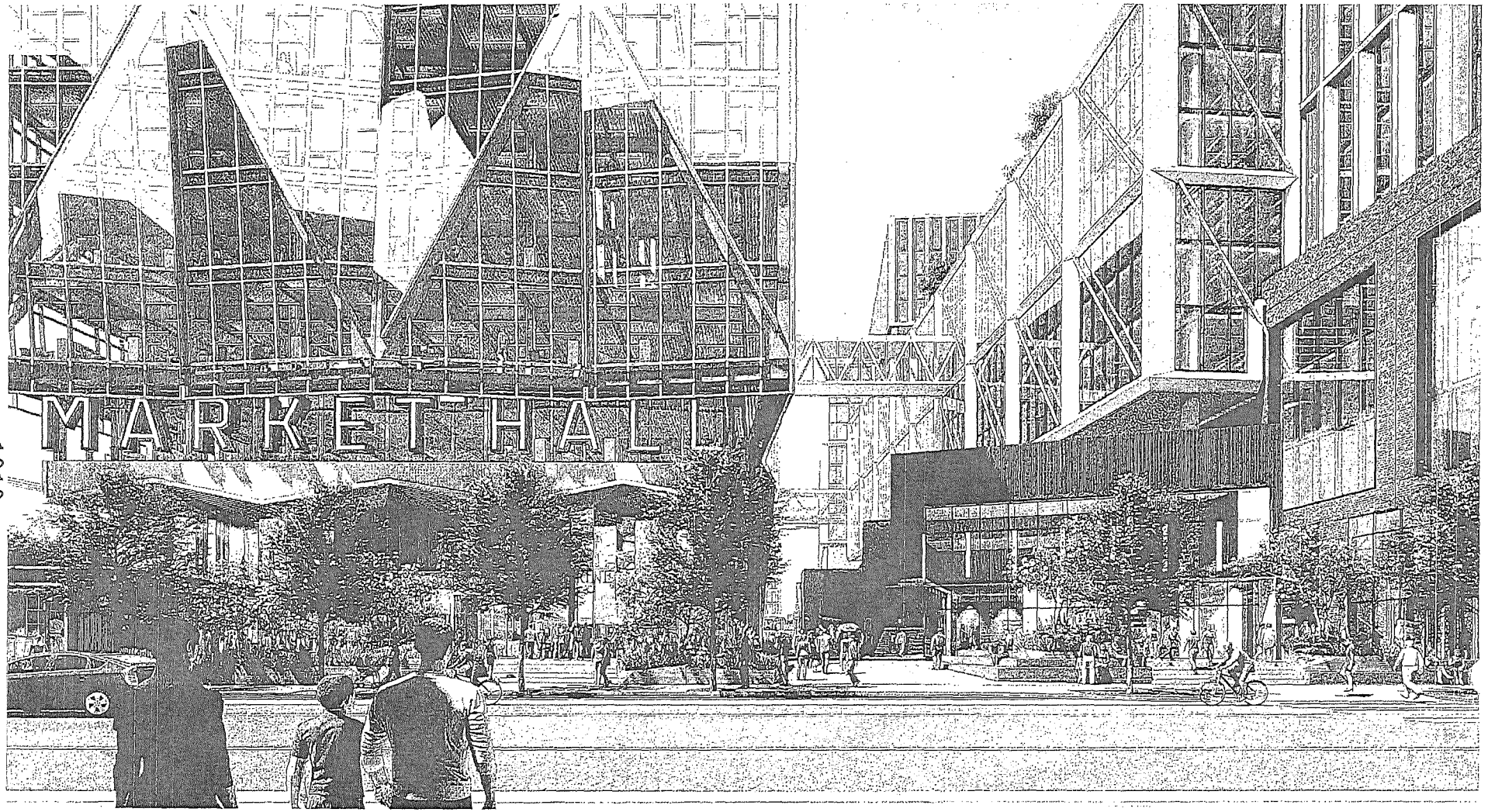
KILROY

adamson | RCH STUDIOS



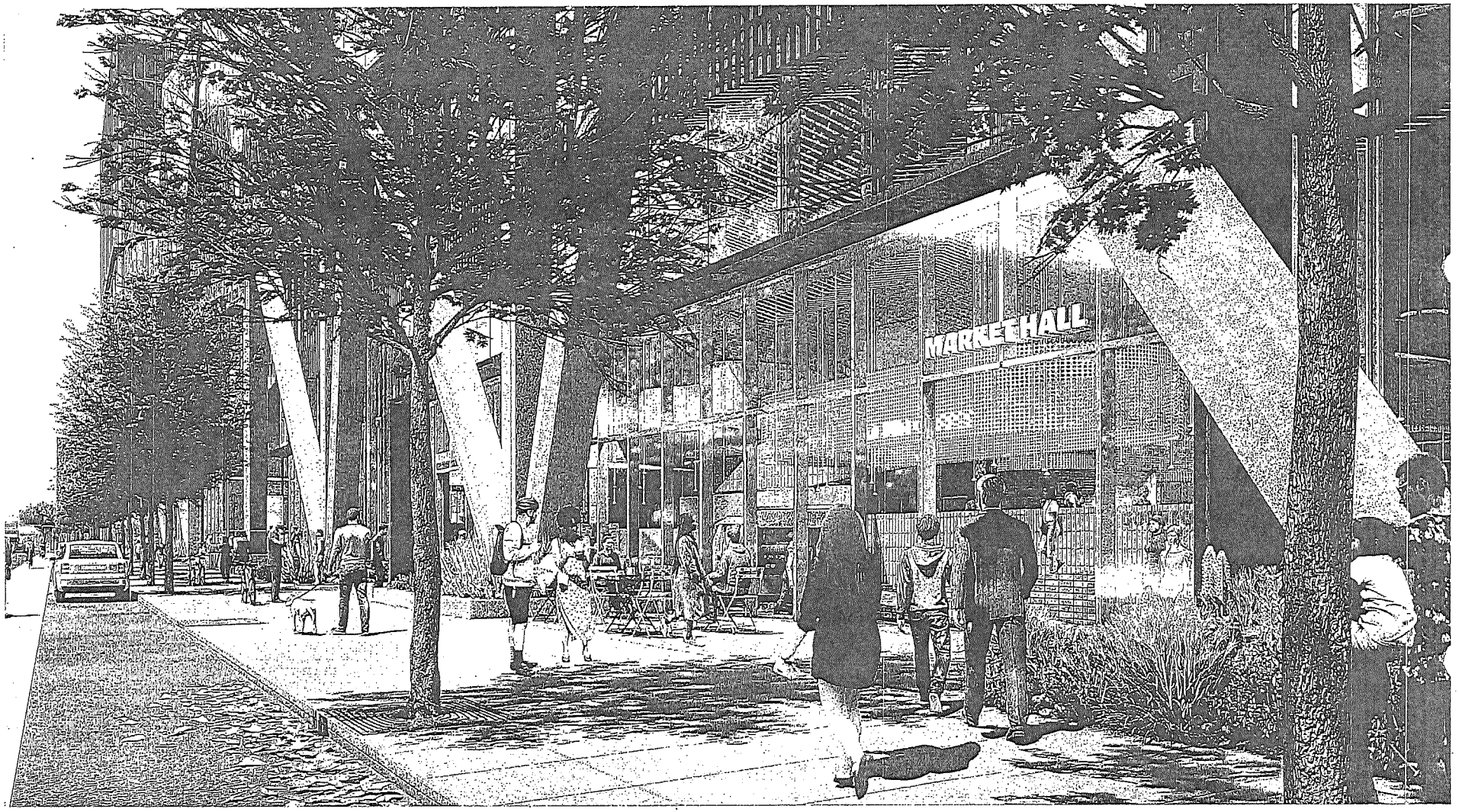
1918

PROJECT VARIANT - PROJECT WITHOUT WHOLESALE FLOWER MART



1919

5TH STREET PLAZA AND MARKET ALLEY



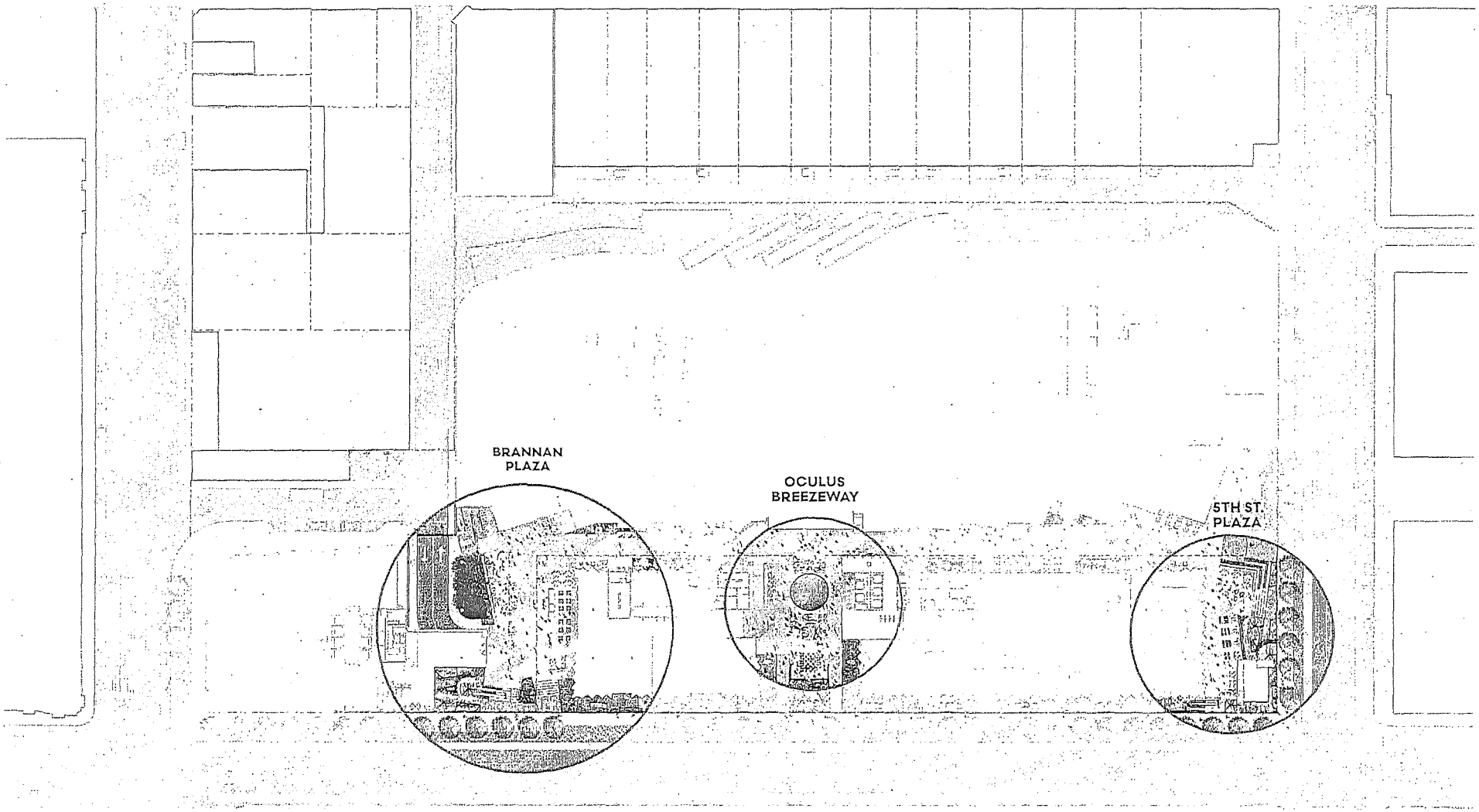
1920

MARKET HALL ENTRY AT BRANNAN STREET

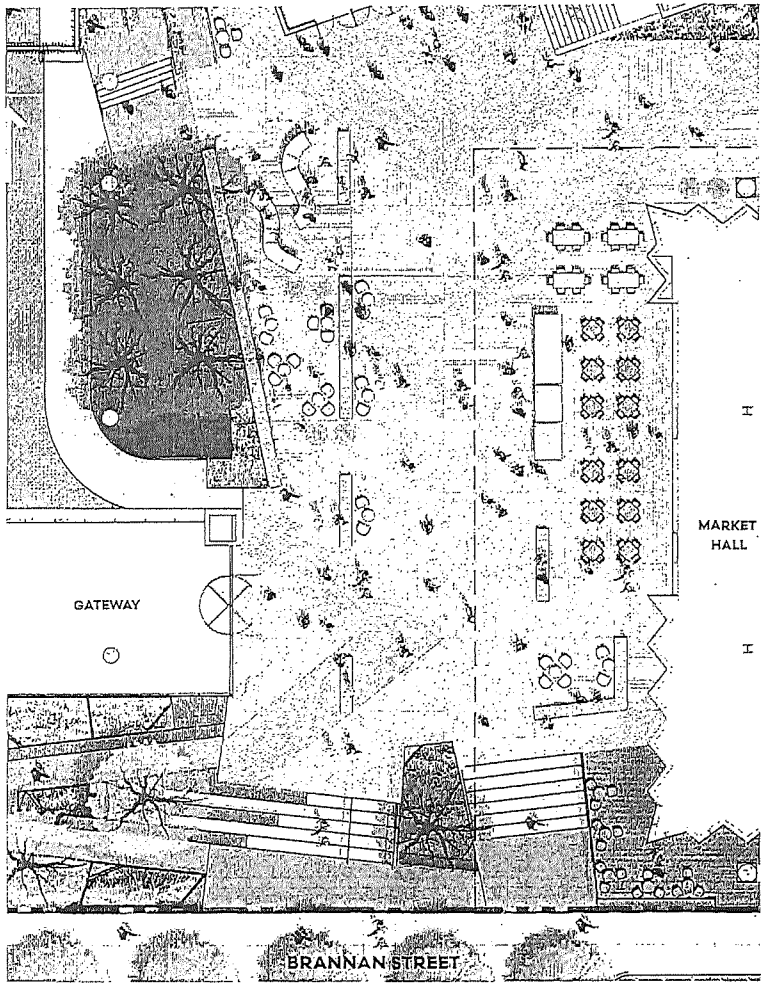
KILROY

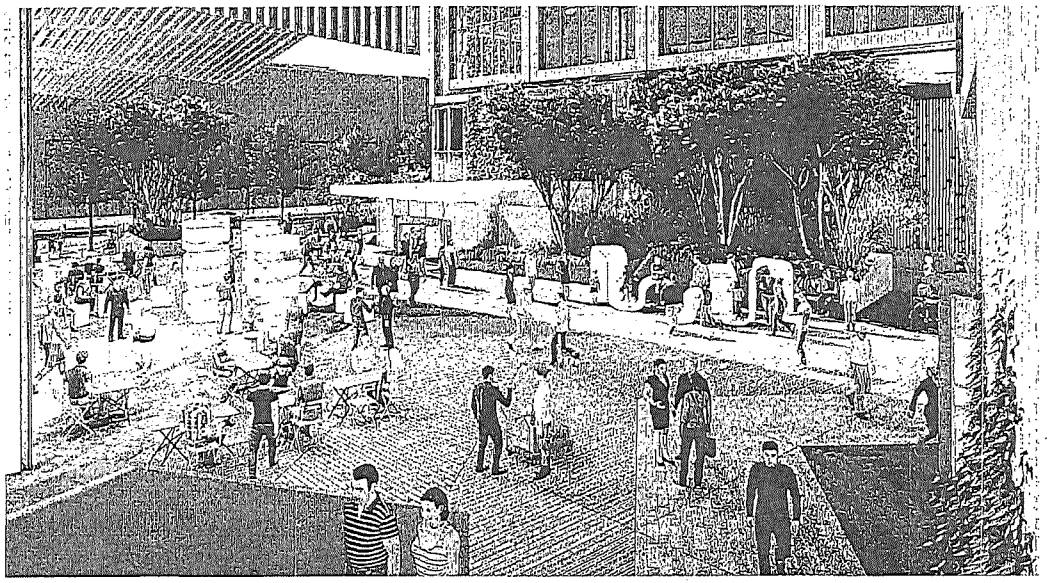
adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

1921

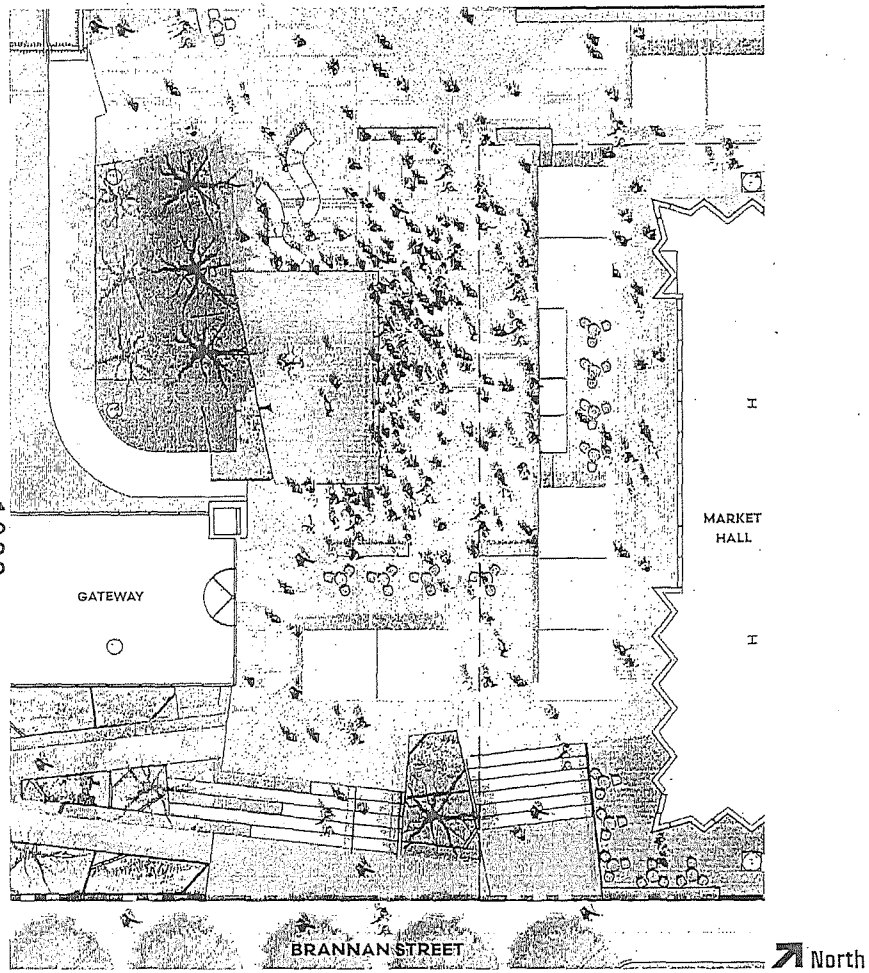


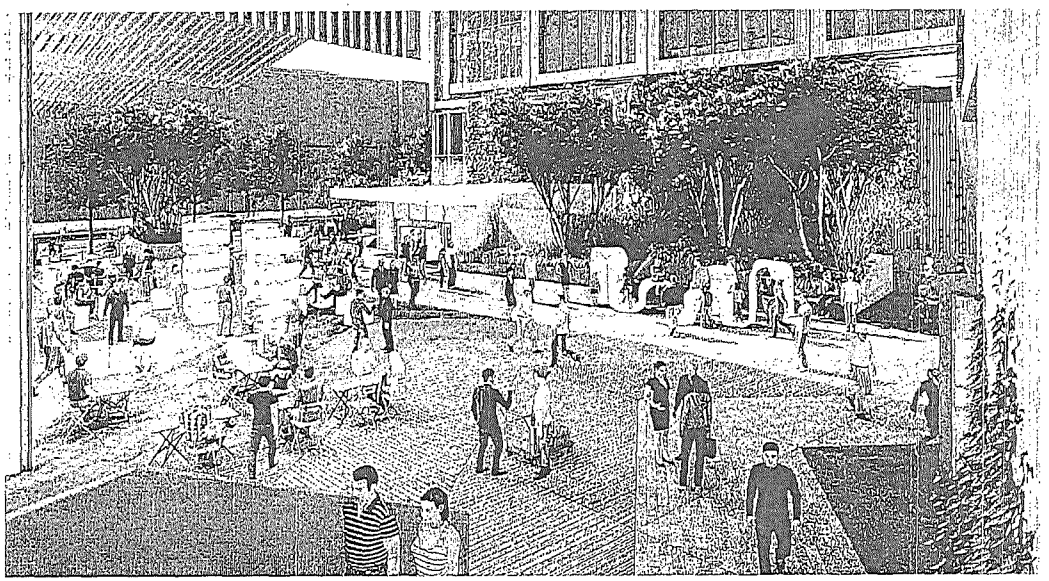
POPOS & PUBLIC PLAZAS





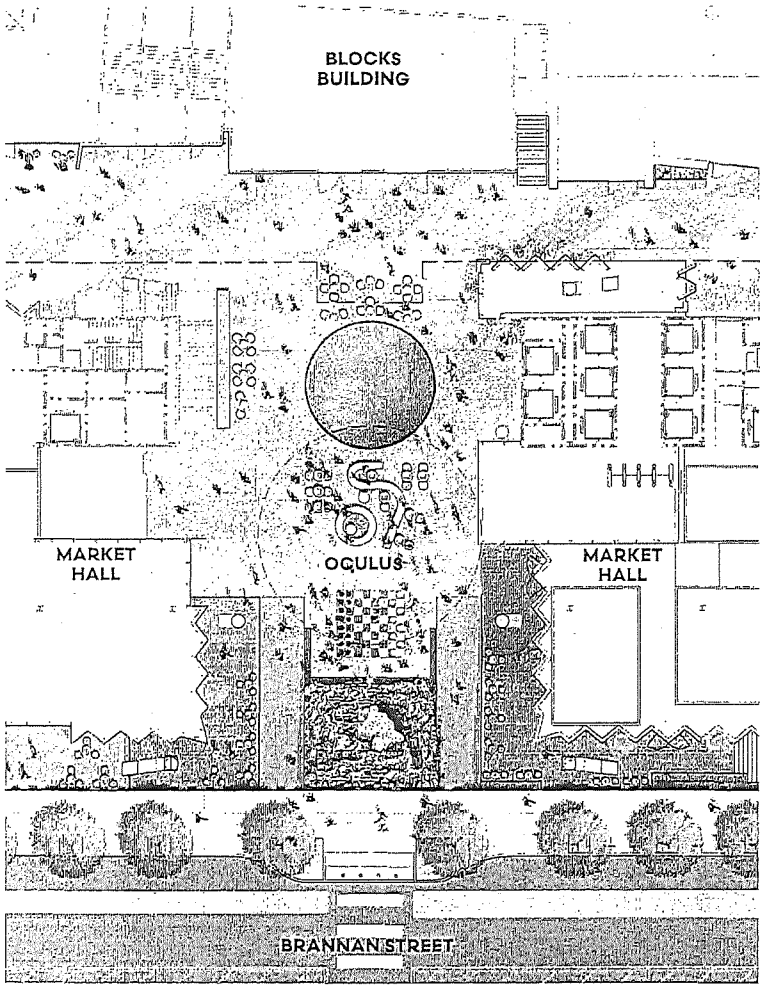
BRANNAN ST FRONTAGE & BRANNAN PLAZA

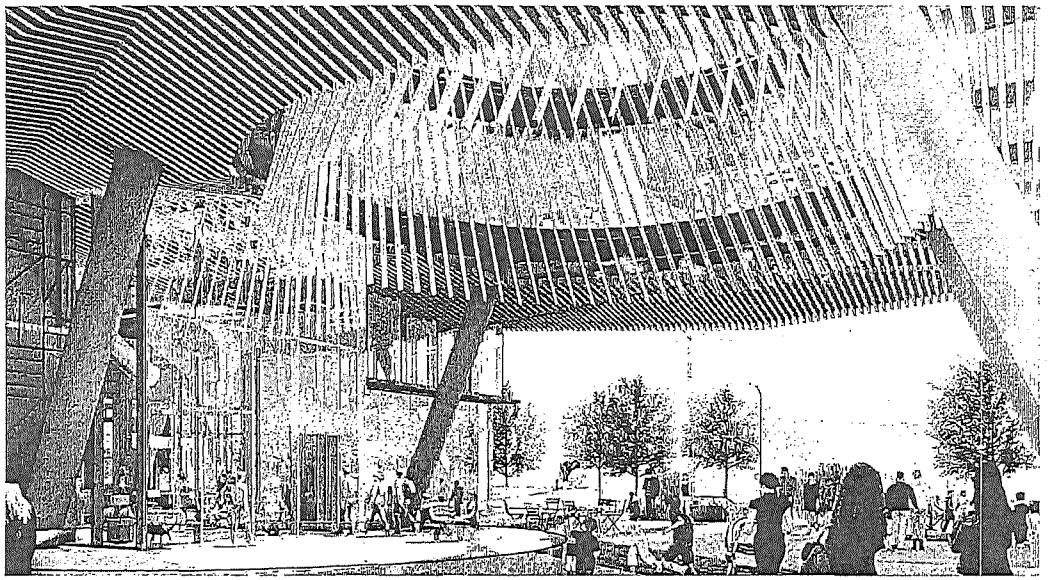




BRANNAN ST FRONTAGE & BRANNAN PLAZA

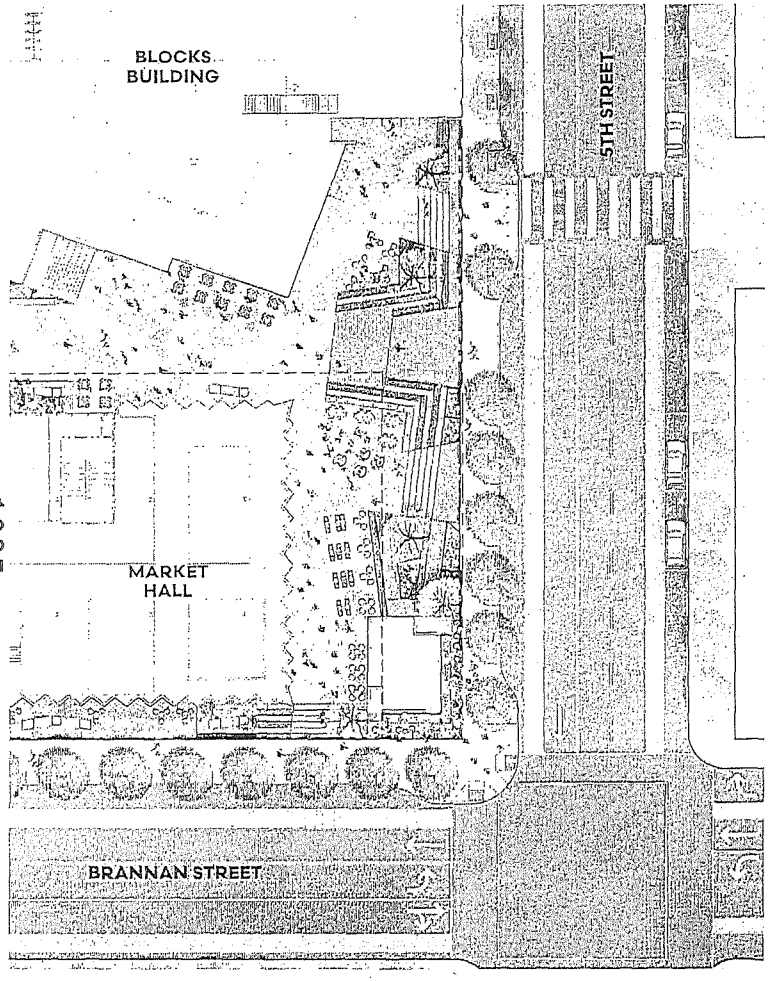
KILROY

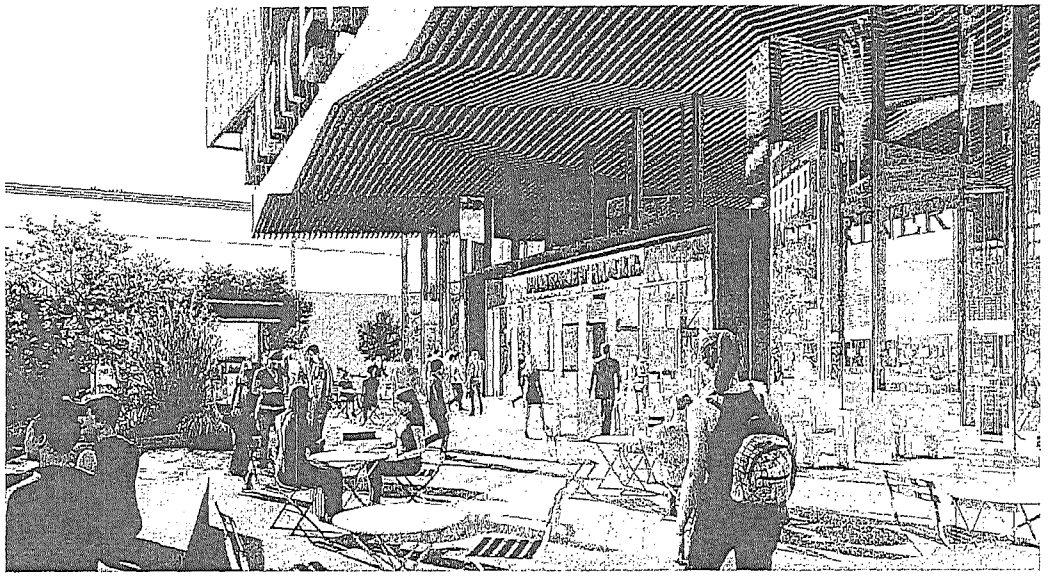




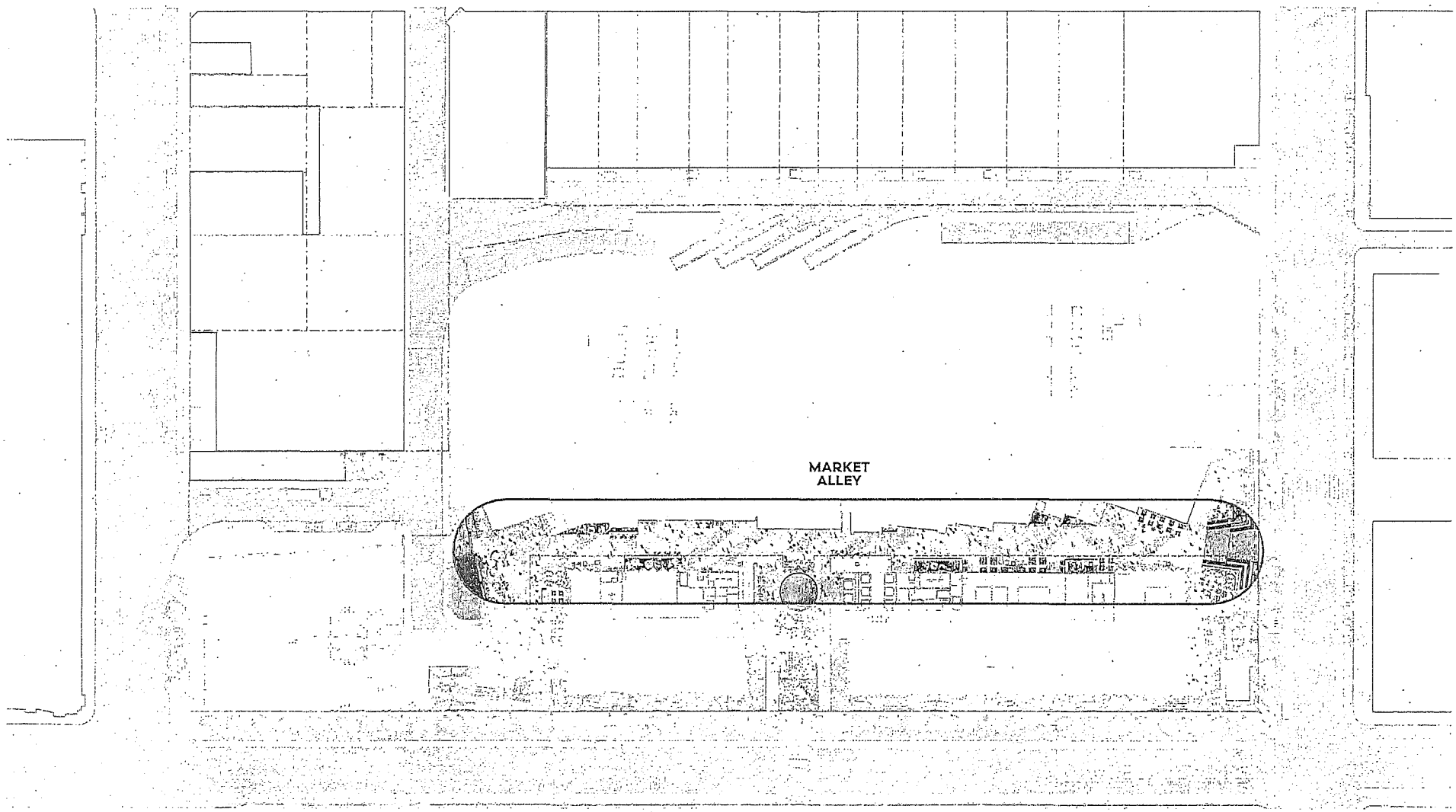
1924

SHARED OCULUS BREEZEWAY



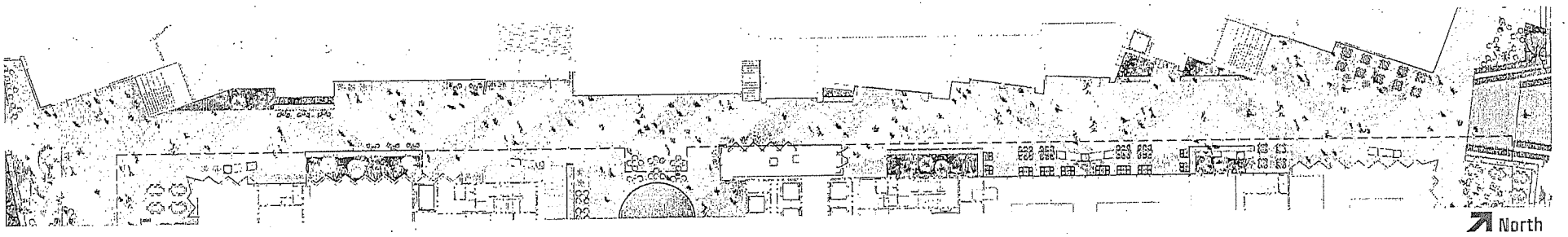


5TH STREET FRONTAGE & 5TH ST PLAZA

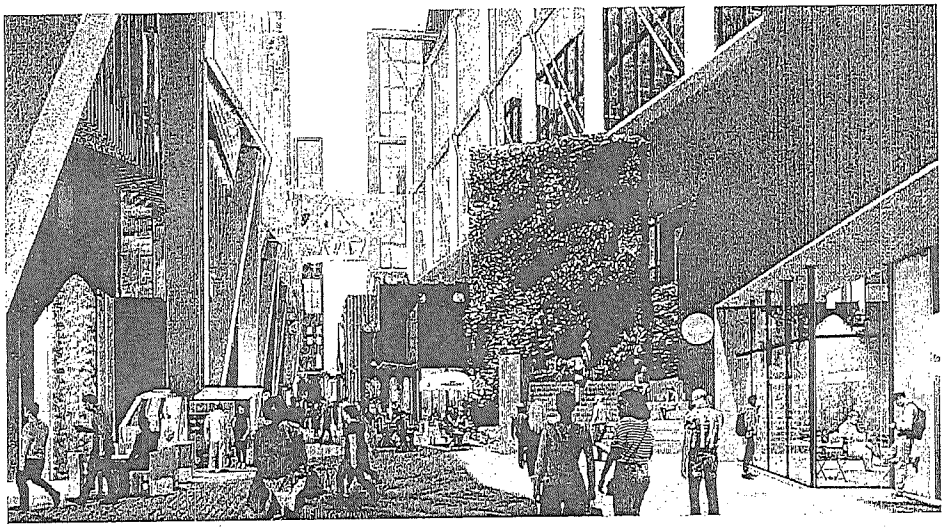


MARKET ALLEY / MID BLOCK CONNECTION

KILROY

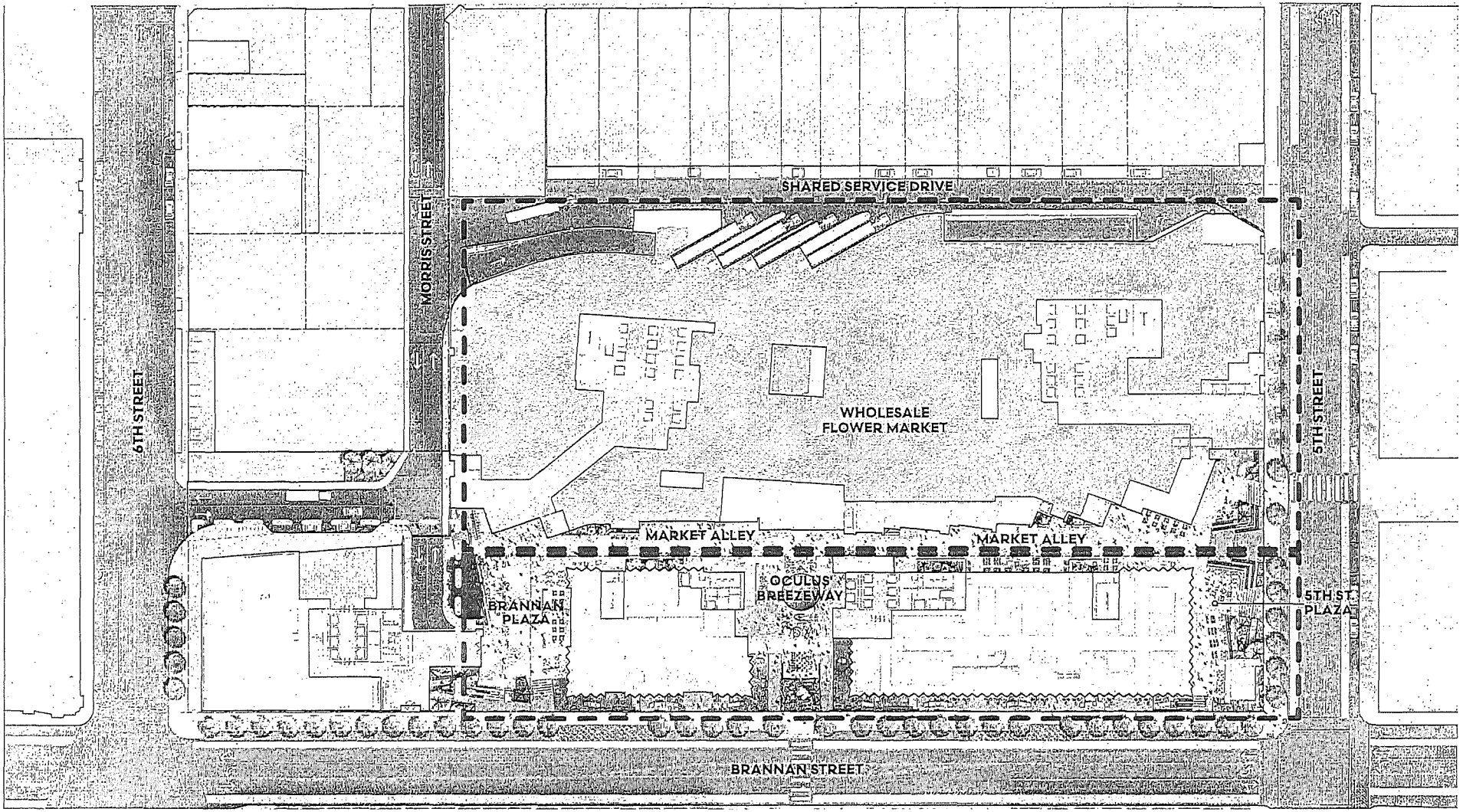


1927



MARKET ALLEY / MID BLOCK CONNECTION

1928



PROJECT PHASING

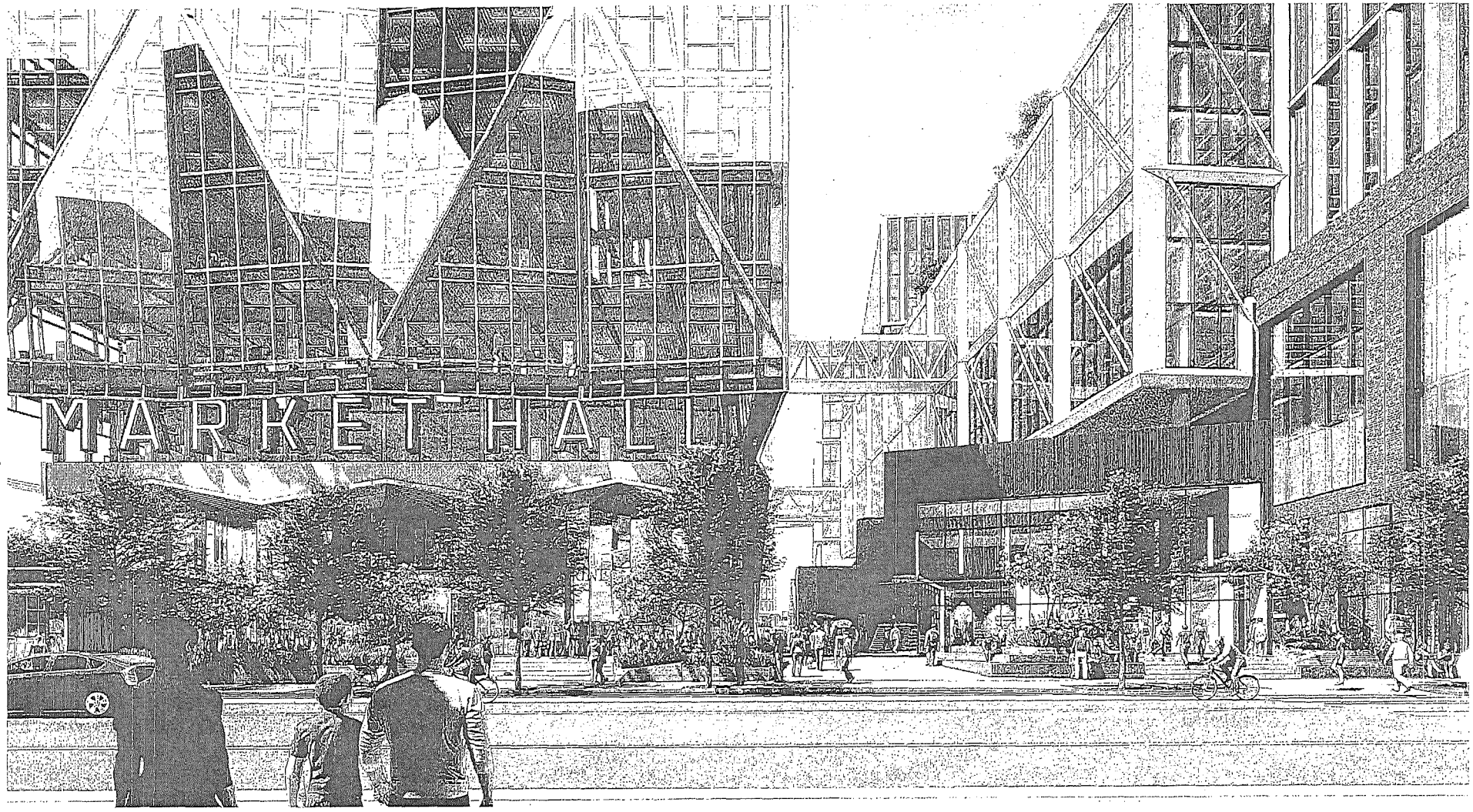
LEGEND

- Phase 1a Construction
- Phase 1b Construction
- Phase 1c Construction

North

KILROY

adamson | RCH STUDIOS



1929

5TH STREET PLAZA AND MARKET ALLEY

Project Summary

GROSS SQUARE FOOTAGE (GSF)	EXISTING USES	EXISTING USES TO BE RETAINED	NET REQ.	NET NEW PROVIDED	PROJECT TOTALS
ABOVE GRADE					
Wholesale Flower Market (warehouse)	141,992	113,036		0	113,036
Wholesale Flower Market (retail)	4,900 (restaurant)	4,900		5,100	10,000
Wholesale Flower Market (loading)	0	0		20,000	20,000
TOTAL FLOWER MART GSF	**146,892**	**117,936**		**25,100**	**143,036**
Residential	0	0		0	0
Retail	0	0		73,459	73,459
Office	0	0		2,032,165	2,032,165
Lot 47 Vacant	27,088	0		0	0
Other Industrial / PDR	18,461	0		0	0
TOTAL ABOVE GRADE GSF	**45,549**	**0**		**2,105,624**	**2,105,624**
AUXILIARY USES BELOW GRADE					
Wholesale Flower Market Parking	50,000	50,000		28,779	78,779
Wholesale Flower Market Trucks				48,780	48,780
Wholesale Flower Market Mech/Service				4,700	4,700
Other Parking	41,745	41,745		247,883	289,628
Cores + Other Uses				123,621	123,621
TOTAL BELOW GRADE GSF	**91,745**	**91,745**		**453,763**	**545,508**
PROJECT FEATURES					
Dwelling Units	0	0		0	0
Hotel Rooms	0	0		0	0
Wholesale Flower Market Car Parking Spaces	144	144		6	150
Wholesale Flower Market Truck Parking Below Grade	0	0		23	23
Other Uses Freight Loading Below Grade	0	0		3	3
Other Parking Spaces	105	105	619	514	619
Class 1 Bike Parking Spaces	0	0	410	410	410
Class 2 Bike Parking Spaces	0	0	86	86	86
Disabled Parking Spaces	10	10	31	21	31
Car Share Spaces	0	0	15	15	15
At-Grade Loading Spaces	0	0		4	4
Number of Buildings	12	0		3	3
Height of Buildings	115.9' to 29'4			85'-105' podium, 160'-200' midrise, 236' tower	85'-105' podium, 160'-200' midrise, 236' tower
Number of Stories	1 + Mezzanine			up to 18	up to 18

1930

PROJECT VARIANT: WITHOUT WHOLESALE FLOWER MARKET

Project Features

VEHICLE PARKING
Per Zoning Code

1. Permitted Parking

Program	gfa	ofa		Spaces
Retail	90,976	53,920	1:1500 gfa	61
Office	2,061,380	1,997,829	1:3500 ofa	571
		Subtotal		632

3. Car Share

632	1:50	13
	Subtotal	13

Total Auto Parking Spaces Provided **645**

4. Off-Street Loading Spaces Required

Program	gsf	ofa	Loading Spaces
Retail	90,976	53,920	2
Office	2,061,380	1,997,829	20
		Total	22

5. Off-Street Loading Spaces Provided

B-01 Basement	Service	8.5' x 20'	26
At-grade	Freight Loading	12' x 50'	3
	Freight	12' x 36'	3
	Freight (Trash)	12' x 56'	3
	Total Service		26
	Total Freight		9

BICYCLE PARKING
Required by Zoning Code

6. Class 1

			Spaces
Office	1,997,829 ofa	1:5000 ofa	400
Retail	29,646 ofa	1:7,500 ofa	4
Eating	24,274 ofa	1:7,500 ofa	3
Child care	22,690 sf	1:20 children	6
		Subtotal	413
		Total (125%)	**516**

7. Class 2

			Spaces
Office	1,997,829 ofa	2 + 1:50,000 over 5,000	42
Retail	29,646 ofa	1:2,500 ofa	12
Eating	24,274 ofa	1:750 ofa	32
Child care	22,690 sf	1:20 children	6
		Subtotal	**92**

8. Showers & Lockers

Per TDM Active-3		Qty.
Showers	1:30 Class 1 Spaces	18
Lockers	6:30 Class 1 Spaces	103

RETAIL GROSS FLOOR AREA
Areas by Type

Basement Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
B-02		8,020				8,020
	Total	**8,020**	**0**	**0**	**0**	**8,020**
Market Hall Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		4,860	8,478		20,511	33,849
2nd Floor		12,162		6,488		18,650
Market Hall Penthouse			8,404			8,404
	Total	**17,022**	**16,882**	**6,488**	**20,511**	**60,903**
Blocks Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		9,928		3,967	1,665	15,560
	Total	**9,928**	**0**	**3,967**	**1,665**	**15,560**
Gateway Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		6,493				6,493
	Total	**6,493**	**0**	**0**	**0**	**6,493**
Total Project Retail GFA		**41,463**	**16,882**	**10,455**	**22,176**	**90,976**

Item # 8 - LAND USE, Dec. 9, 2019 FILE #190662

Repetto

Dear Board of Supervisors:

We're writing to you on behalf of our floral and event community, asking that you act to ensure the continued viability of our San Francisco Flower Market.

We are among the 4,000+ customers of the Flower Market — small business owners who employee hundreds of people and generate millions of dollars in business here in San Francisco and across Northern California. Every hotel, event company, convention, bride, church, temple and restaurant in the city relies on us to provide florals for their events and customers, and WE rely solely on the Flower Market as our source for the product we need to service our clients.

The survival of the San Francisco Flower Market is absolutely essential to the survival of our own businesses - a fact which we cannot stress enough to you. There is *no* alternative source for the flowers we need on a daily basis, and without the Market, our businesses cannot survive. The City and County of San Francisco will feel our loss in the lost revenue from our sales, the lost jobs, and the failure of our businesses.

Kilroy understood when they purchased the Flower Market site that the deal was contingent on creating a new home for the Market. They stand to make millions of dollars on this project, and they should not be allowed to do it on the backs of small business owners here in San Francisco.

If the plan presented to you today does not provide a stable, guaranteed new home for the Flower Market, we urge you to withhold approval of this project until such time that it does.

Sincerely,

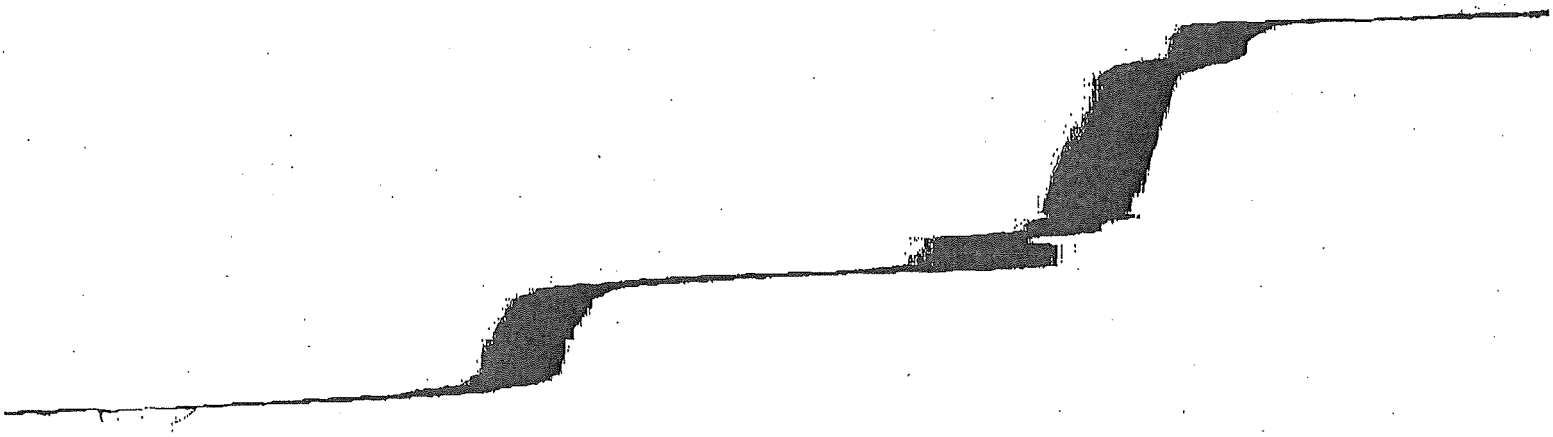
NAME	EMAIL	BADGE #
Steven W. Ban	Sbflord98@aol.com	2829

[*]

Steven W. Pitts — Sbtlora1@aol.com — 2829 [2]

Jennifer Tuberville — jennytlab@comcast.net — 5177

[illegible] — hemmee@att.net



NAME	EMAIL	BADGE #
Aiki Davidson	Nab8033@gmail	5177
S.M. Porter	?	?
Joanne B. Yabut	myabut@ccsf.edu	5177
JASEN ILDEFONZO	jildefonzo@gmail.com	5177
MONICA COLLINS	lizzydt@gmail.com	
MICHAEL ADAMS	facilitato@aol.com	
Harry Bernstein	miguerique@yahoo.com	
Sally Magnuson	chencho415@Yahoo.com	
Laurie Jean Anderson	lauriej_martin@yahoo.com	

[*]

[*] We are among the largest customers of the Flower Market — small business owners who employee hundreds of people and generate millions of dollars in business here in San Francisco and across Northern California. Every hotel, event company, convention, bride, church, temple and restaurant in the city relies on us to provide florals for their events and customers, and WE rely solely on the Flower Market as our source for the product we need to service our clients.

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If the plan presented to you today does not provide a stable, guaranteed new home for the Flower Market, we urge you to withhold approval of this project until such time that it does.

Sincerely,

NAME	EMAIL	BADGE #
E. BROOKE HARRINGTON		3531
	VALLEYFLORA@EARTHLINK.NET	
Sylvia Burgess / Monterra Inc		1936

Figone

Dear Board of Supervisors:

We're writing to you on behalf of our floral and event community, asking that you act to ensure the continued viability of our San Francisco Flower Market.

We are among the 4,000+ customers of the Flower Mart since 1937

[2]

NAME	EMAIL	BADGE #
Maia Bull	maiagbull@gmail.com	4343
Denise Burnett	denise@blossomssanmateo.com	1329
Rebekah Northway	rebekah@thepetalersf.com	#3003
Lisa Berlin-Soltesz	lisa@menlobotanica.com	#3317

FSS

Dear Board of Supervisors:

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Sincerely,

NAME	EMAIL	BADGE #
Jack D Epstein	chocolate coverings SF	415-641-8123
Maurice Kari	Kari Maurice@gmail.com / Kari.Maurice@ych.com	415 366 2511 #3149
Joanne Waller	joanne@jongeflowers.com	#3561

K

NAME	EMAIL	BADGE #
Cast By Flower	ebfca06@comcast.net	4147
Elizabeth Sparks	esparks@gmail.com	#5032
Sona Pehlivanian	Frank's floral shop	#4610
Karen Rossi	GOODEARTH/Village Green	#3143 + 6281
Julie Stevens	julie@juliestevensdesign.com	#1556
Michael Daisian	michael@michael.com	#3391
Lance Lewis	Lancelew1@gmail.com	3056
Felice Faison	felicefaison@anaviv.com	2002
LEAH LAGNE	leah@waterlilypond.com	2161
Diane Tiry	Diane@waterlilypond.com	2161
Nancy Montes	ARAFFINAFLORAL@SBCGLOBAL.NET	6638
Austin	3k@nycellist.com	6001
Cheri MIMS	cmims29@gmail.com	4257
Marnie Lyman	flowersbymarnie@gmail.com	4370
Greg Lyn	sharkbite341@gmail.com	10015
Jacky Simpson	Jacquelynn@taskcatering.com	2547
Cori Dalton	Dalton42@gmail.com	1983
PATTY SISKIND	PWSISKIND@GMAIL.COM	8024

Pacific Coast

Dear Board of Supervisors:

We're writing to you on behalf of our floral and event community, asking that you act to ensure the continued viability of our San Francisco Flower Market.

We are among the 4,000+ customers of the Flower Market — small business owners who employee hundreds of people and generate millions of dollars in business here in San Francisco and across Northern California. Every hotel, event company, convention, bride, church, temple and restaurant in the city relies on us to provide florals for their events and customers, and WE rely solely on the Flower Market as our source for the product we need to service our clients.

The survival of the San Francisco Flower Market is absolutely essential to the survival of our own businesses - a fact which we cannot stress enough to you. There is *no* alternative source for the flowers we need on a daily basis, and without the Market, our businesses cannot survive. The City and County of San Francisco will feel our loss in the lost revenue from our sales, the lost jobs, and the failure of our businesses.

Kilroy understood when they purchased the Flower Market site that the deal was contingent on creating a new home for the Market. They stand to make millions of dollars on this project, and they should not be allowed to do it on the backs of small business owners here in San Francisco.

If the plan presented to you today does not provide a stable, guaranteed new home for the Flower Market, we urge you to withhold approval of this project until such time that it does.

Sincerely,

NAME	EMAIL	BADGE #
S. WOOD		#8273
F. EDDY	frankeddy@mac.com	#[illegible]267
JUDY SIEBEL	judy@emilyjoubert.com	#3864

NAME	EMAIL	BADGE #
Kristen Kanzler White	contact@driftwoodandroses.com	#2404
Felicia Shanborn	Yourmemoriesforever@gmail	
KIMBERLY ENDLE	KATHERINE@CHERRIES FLOWERS.COM	1874
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TIM O'SHEA	TIM@GREENTIDESIGN.COM	4615
pamela scott	pamela c arts crafts and conversation.com	
Sharla Flock	Sharla@sharlaflockdesigns.com	#4901
Gina Baiamonte	theboomgeneration@gmail.com	2033
KAREN May	HILLSIDEASSOC3@GMAIL.COM	#4049
[illegible]	[illegible] Design	3753
Maurice Nurse		2956
Natasha Lisitsa	2167 NATASHA @ WaterLily	
Ricardo Aguilar	ricardo@velaflor.com	#6073
Stephen O'Connell	Floramor.com.	#2620
Arlene Boyle	Violetta flowers@gmail.com	419

[*]

To Schio

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Sincerely,

NAME	EMAIL	BADGE #
Janet C. Farina	janet@freshlycut.com	2030
Karl Eckel	Karl@delfortwest-flowers	3295
Elizabeth Wardman	fleuristas@wisteriarockridge.com	3413
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Michele Lowis js @floranfauna2^gmail #2983 [2]

Sarah Reyes Wildflower and Fern #1891

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Linda Glick lindaglick@hotmail.com #1566

LARRY HOOGKAMP CONTACT@HOOGKAMP.COM #2116

John James john@johnjamesdesigns. #6060

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Joan Dellaca cattails9494@sbcglobal.net #2681
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#1787

#1101 [3]

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	heihopes@yahoo.com	
	mark@thelittlefield.com	#2005

COMMITTEE ON

J O B S

190682
Received via email
12/9/19

December 9, 2019

The Honorable Aaron Peskin, Chair
The Honorable Matt Haney
The Honorable Ahsha Safai

Dear Supervisors:

On behalf of the Committee on Jobs, a San Francisco association representing many of the City's largest employers, I write to express our strong support for the SF Flower Mart Central SoMa Project.

As you know, San Francisco faces a significant shortage of commercial office space, with one of the lowest vacancy rates in the nation, which has also translated into some of the highest prices. This office space crunch punishes businesses of all shapes and sizes, including nonprofit organizations, small businesses, manufacturers, and traditional businesses, through high leasing costs that are forcing them to consider moving out of an increasingly cost-prohibitive San Francisco office market.

In addition to providing much-needed new commercial office space at a critical time for San Francisco, the Flower Mart project also provides unprecedented economic, housing, community and employment benefits, including:

- $231 million in impact fees, including $110 million for new affordable housing.
- $39.2 million in direct annual tax revenue for the City/County of San Francisco
- 8,050 annual construction-related jobs, with economic output totaling $1.5 billion during the construction period (2020-2023)
- 14,800 SF off-site land dedication to Mayor's Office of Housing for 100% affordable housing (up to 100+ units)
- Enhanced workforce program
- 100,000 SF neighborhood-serving retail & market hall
- 36,000 SF on-site privately-owned public open space
- Build a brand new wholesale flower mart to preserve San Francisco's wholesale flower industry.

For these and other reasons, the Committee on Jobs urges you to support the SF Flower Mart Development Agreement. Thank you for your consideration.

Sincerely,

Chris Wright
Executive Director

235 Montgomery Street, Suite 965 • San Francisco, CA 94104 • telephone 415-956-9966 • fax 415-956-9989

Major, Erica (BOS)

From: Chris Wright <chris@sfjobs.org>
Sent: Monday, December 09, 2019 10:19 AM
To: Peskin, Aaron (BOS); Haneystaff (BOS); Safai, Ahsha (BOS)
Cc: Sandoval, Suhagey (BOS); RivamonteMesa, Abigail (BOS); Angulo, Sunny (BOS); Major, Erica (BOS)
Subject: CoJ letter in support of the SF Flower Market Central SoMa Project
Attachments: CoJ Letter in support of the SF Flower Market Central SoMa Project.pdf

December 9, 2019

The Honorable Aaron Peskin, Chair
The Honorable Matt Haney
The Honorable Ahsha Safai

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Sincerely,

Chris Wright
Executive Director

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

LAND USE AND TRANSPORTATION COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Land Use and Transportation Committee will hold a public hearing to consider the following proposals and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: **Monday, December 9, 2019**

Time: **1:30 p.m.**

Location: **Legislative Chamber, Room 250, located at City Hall**
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

Subjects: **File No. 190681.** Ordinance amending the Planning Code and Zoning Map to establish the 2000 Marin Street Special Use District (Assessor's Parcel Block No. 4346, Lot No. 003), and to create additional Key Site exceptions for the Flower Mart site, located on the southern half of the block north of Brannan Street between 5th Street and 6th Street (Assessor's Parcel Block No. 3778, Lot Nos. 001B, 002B, 004, 005, 047, and 048); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

File No. 190682. Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the development of an approximately 6.5-acre site located at 5th Street and Brannan Street, with various public benefits including a new on-site or off-site wholesale flower market; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving the receipt and expenditure of funds for an off-site new wholesale flower market as set forth in the Development Agreement, as applicable; approving the development impact fees for the project and waiving certain Planning Code fees and requirements for a temporary flower market; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; and ratifying certain actions taken in connection therewith, as defined herein.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made part of the official public records in these matters, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to these matters can be found in the Legislative Research Center at sfgov.legistar.com/legislation. Meeting agenda information relating to this matter will be available for public review on Friday, December 6, 2019.

Angela Calvillo
Clerk of the Board

DATED/MAILED/POSTED: November 27, 2019

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

June 19, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On June 11, 2019, Supervisor Haney submitted the following proposed legislation:

File No. 190681

Ordinance amending the Planning Code to reference the Polk/Pacific Special Area Design Guidelines; affirming the Planning Department's determination under the California Environmental Quality Act; adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

File No. 190682
Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the development of an approximately 6.5-acre site located at 5th Street and Brannan Street, with various public benefits including a new on-site or off-site wholesale flower market; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving the receipt and expenditure of funds for an off-site new wholesale flower market as set forth in the Development Agreement, as applicable; approving the development impact fees for the project and waiving certain Planning Code fees and requirements for a temporary flower market; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; and ratifying certain actions taken in connection therewith, as defined herein.

The proposed ordinances are being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinances are pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 JUN 14 PM 3:48
BY

Time stamp or meeting date

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- [ ] 2. Request for next printed agenda Without Reference to Committee.
- [ ] 3. Request for hearing on a subject matter at Committee.
- [ ] 4. Request for letter beginning :"Supervisor _____ inquiries"
- [ ] 5. City Attorney Request.
- [ ] 6. Call File No. _____ from Committee.
- [ ] 7. Budget Analyst request (attached written motion).
- [ ] 8. Substitute Legislation File No. _____
- [ ] 9. Reactivate File No. _____
- [ ] 10. Topic submitted for Mayoral Appearance before the BOS on _____

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- [ ] Small Business Commission
- [ ] Youth Commission
- [ ] Ethics Commission
- [x] Planning Commission
- [ ] Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Haney

Subject:

Development Agreement – KR Flower Mart, LLC – Flower Mart Project – Fifth and Brannan Street

The text is listed:

Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC

Signature of Sponsoring Supervisor:

For Clerk's Use Only

1958