FINAL DRAFT DATED 9/10/25

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AND WHEN RECORDED MAIL TO:

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(Exempt from Recording Fees Pursuant to Government Code Section 27383)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND PROLOGIS, L.P.,

FOR THE SAN FRANCISCO GATEWAY PROJECT

Block/Lots 5284A/008 and 5287/002

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND PROLOGIS, L.P.

THIS DEVELOPMENT AGREEMENT dated for reference purposes only as of this _____ day of ______, 2025, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through its Planning Department, and Prologis, L.P., a Delaware limited partnership ("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 have the meanings given in <u>Article 1</u>.

RECITALS

This Agreement is made with reference to the following facts:

- A. Developer is the owner of approximately 17.1 gross total acres (approximately 743,800 square feet), generally bounded by and including portions of Kirkwood Avenue to the north, Rankin Street to the east, McKinnon Avenue to the south, and Toland Street to the west, and further described on Exhibit A (the "Project Site"). The Project Site is currently improved with four single-story production, distribution, and repair ("PDR") buildings, totaling approximately 448,000 square feet.
- B. On September 18, 2015, Developer filed an Environmental Evaluation application with the Planning Department, and on December 14, 2017, filed a Conditional Use Authorization application for a Planned Unit Development. Developer proposes demolishing the four existing buildings, and constructing a development project with two new PDR and commercial buildings as permitted by the Approvals, which may include manufacturing and Maker Space (as defined herein), parcel delivery service, wholesale sales and storage, private parking garage, and other uses allowed under the PDR-2 zoning and the Project SUD (as further described in Exhibit B, the "Project"). Specifically, the Project would include two new multi-story buildings, totaling approximately 2,160,000 square feet, with approximately 1,646,000 of enclosed gross square footage and approximately 514,000 square feet of open, active roof area. The two buildings would include a total of approximately 1,637,600 gross square feet of space for PDR and other permitted uses (including at least 20,000 gross square feet of Maker Space) and PDR support space,

approximately 543,500 gross square feet of on-site loading and parking (including a total of approximately 55,900 gross square feet on the ground level and approximately 487,600 gross square feet on the roof level), and approximately 8,400 gross square feet of ground floor retail. The Project would also improve the surrounding streets of Kirkwood and McKinnon Avenues, and Toland, Rankin, and Selby Streets and provide additional streetscape improvements adjacent to the Project Site.

- C. The Project is anticipated to generate an annual average of approximately 795 construction jobs during construction and, upon completion, approximately 1,980 permanent onsite jobs, an approximately \$7 million annual increase in property taxes, approximately \$16 million in development impact fees (including transportation, school, and capacity fees), and approximately \$5.8 million in annual general fund revenues to the City.
- D. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("Chapter 56") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.
- E. In addition to the significant jobs and economic benefits to the City from the Project, the City has determined that as a result of the development of the Project in accordance with this Agreement, additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Major additional public benefits to the City from the Project include: (i) the Affordable PDR Program and other small business, community, and PDR support; (ii) Transportation Demand Management measures that exceed the level otherwise required; (iii) street and infrastructure improvements that exceed the level otherwise required; (iv) workforce obligations; and (v) sustainability and resilience measures.
- F. The Parties intend all acts pursuant to this Agreement to 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 Ordinances and all other applicable Laws in effect as of the Operative 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.

- H. On _______, 2025, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission adopted the CEQA Findings and determined among other things that the FEIR thoroughly analyzes the Project, that the Mitigation Measures are designed to mitigate significant impacts to a less-than-significant level, 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, and the policies set forth in Section 101.1 of the Planning Code (together the "General Plan Consistency Findings"). The information in the FEIR and the CEQA Findings has been considered by the City in connection with this Agreement.

	J.	On	, 2025,	the	Board	adopted	Ordina	nce No	. []
am	ending th	e Plannin	g Code and Special Use	e Dis	strict M	ap SU10	to crea	ate the S	San F	rancisco
Gat	teway Spe	ecial Use	District ("Project SUD")	and	amend	ing Heig	ht and E	Bulk Dis	trict N	Л ар Н10
(Fi	le No. 250	0946), and	d Ordinance No. []	approv	ing this A	Agreeme	ent (File	No. 2	250947),
and	l authorizi	ing the Pla	nning Director to execute	e this	Agree	nent on l	ehalf of	the City	(coll	ectively,
the	"Enactin	g Ordina	ances"). The Enacting Or	dina	nces to	ok effect	on			_•
	Now	therefore	, for good and valuable of	onsi	deratio	n, the rec	ceipt and	l sufficion	ency o	of which
are	hereby ac	cknowled	ged, the Parties agree as t	follo	ws:					

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 "**AB 98**" is defined in <u>Section 5.1.2</u>.
- 1.2 "Administrative Code" means the San Francisco Administrative Code.
- 1.3 "**Affordable PDR Program**" means the Affordable PDR Program attached hereto as part of Exhibit D.
- 1.4 "**Agreement**" means this Development Agreement, the Exhibits and Schedules which are expressly incorporated herein by reference, and any amendments thereto.
 - 1.5 "Annual Review Date" is defined in Section 8.1.
 - 1.6 "Applicable Impact Fees and Exactions" is defined in Section 5.7.2.
- 1.7 "**Applicable Laws**" is defined in <u>Section 5.2</u> (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).
- 1.8 "**Approvals**" means the Initial Approvals listed on <u>Exhibit C</u> and any Later Approvals at the time and to the extent they are included pursuant to <u>Sections 5.1</u> and <u>5.3</u>.
 - 1.9 "Assignment and Assumption Agreement" is defined in Section 12.2.
 - 1.10 "Associated Community Benefit" is defined in Section 4.1.
- 1.11 "Board of Supervisors" or "Board" means the Board of Supervisors of the City and County of San Francisco.
- 1.12 "Building" or "Buildings" means each of the new buildings to be constructed on the Project Site, as described in the Project description attached as <u>Exhibit B</u>.

- 1.13 "CEQA" is defined in Recital F.
- 1.14 "CEQA Findings" is defined in Recital G.
- 1.15 "CEQA Guidelines" is defined in Recital F.
- 1.16 "Chapter 56" is defined in Recital D.
- 1.17 "City" means the City as defined in the opening paragraph of this Agreement. Unless the context or text provides otherwise, references to the City mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.
- 1.18 "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 the City Administrator, Planning Department, SFPUC, OEWD, SFMTA, PW, and DBI, together with any successor City agency, department, board, or commission. If a City department has not approved or consented to this Agreement, this Agreement does not affect the jurisdiction under the City's Charter of that City department in connection with the issuance 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).
- 1.19 "City Attorney's Office" means the Office of the City Attorney of the City and County of San Francisco.
- 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 customary 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 that 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 <u>Section 9.6</u> when Developer is the prevailing party.
 - 1.21 "City Parties" is defined in Section 4.6.
 - 1.22 "City Report" is defined in Section 8.2.2.

- 1.23 "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.
 - 1.24 "CMA" is defined in Section 12.1.
- 1.25 "Commence Construction", "Commenced Construction" or "Commencement of Construction" means groundbreaking in connection with the horizontal infrastructure, or, when used in reference to any Building, commencement of physical construction of the applicable Building foundation, but specifically excluding the demolition or partial demolition of existing structures.
 - 1.26 "Community Benefits" is defined in Section 4.1.
- 1.27 "Community Benefits Schedule" means the description of the Associated Community Benefits and the Community Benefits Linkages Table attached to this Agreement as Exhibit N.
- specified scope of work has been substantially completed in accordance with City-approved plans and specifications, (ii) with regard to any Public Improvement, the City Engineer determines the Public Improvement has been completed to their satisfaction in accordance with the Subdivision Code and any applicable Public Improvement Agreement and the Public Improvement is ready for its intended use, (iii) with regard to any Building, a TCO has been issued, (iv) with regard to an Associated Community Benefit that is a monetary payment or contribution, the payment or contribution has been satisfactorily made and verified by the City, and (v) with regard to an Associated Community Benefit that does not fall within Section 1.28(i)-(iv), Developer has completed its obligations to the City's reasonable satisfaction.
- 1.29 "Conditional Use Authorization for a Planned Unit Development" means that certain Conditional Use Authorization described specifically in Exhibit C.
 - 1.30 "Continuing Obligation" is defined in Section 3.7.
 - 1.31 "Compliance Letter" is defined in <u>Section 8.2.1</u>.
 - 1.32 "Curing Lender" is defined in <u>Section 10.5.1</u>.
 - 1.33 "**Dedication Area**" is defined in Section 3.4.7.
 - 1.34 "**Default**" is defined in Section 9.3.

- 1.35 "**DBI**" means the Department of Building Inspection of the City and County of San Francisco.
- 1.36 "**Developer**" is defined 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.
- 1.37 "Development Agreement Statute" is defined in Recital D, as in effect as of the Operative Date.
- 1.38 "Development Parcel" means a parcel within the Project Site on which a Building or other improvements will be constructed, as set forth in an existing or future Subdivision Map.
 - 1.39 "Effective Date" is defined in Section 2.1.
 - 1.40 "Enacting Ordinances" is defined in Recital J.
 - 1.41 "Engineering Design" is defined in Section 5.4.2.
 - 1.42 "Excusable Delay" is defined in Section 11.4.2.
 - 1.43 "Existing Off-Site Conditions" is defined in Section 3.4.4.
 - 1.44 "Existing Standards" is defined in Section 5.2.
- 1.45 "Existing Uses" means all existing lawful uses of the existing land, buildings, and improvements (and including pre-existing uses that are non-conforming under the Planning Code) on the Project Site as of the Operative Date, as the same may be modified by the Approvals.
 - 1.46 "Federal or State Law Exception" is defined in Section 5.8.1.
 - 1.47 "FEIR" is defined in Recital G.
- 1.48 "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 FEIR 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 FEIR, 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 FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the FEIR, and (ii) if a referendum petition relating to this Agreement or the Approvals 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.

- 1.49 "First Construction Document" is defined in San Francisco Building Code Section 107A.13.1(a)(8).
 - 1.50 "First Extended Term" is defined in Section 2.2.
 - 1.51 "First-Level City Contact" is defined in Section 9.2.1.
 - 1.52 "Foreclosed Property" is defined in <u>Section 10.6</u>.
- 1.53 "**Foreclosure**" means a foreclosure, a conveyance or other action in lieu thereof, or other remedial action to obtain title to all or part of the Project Site.
 - 1.54 "General Plan Consistency Findings" is defined in Recital H.
- 1.55 "Gross Floor Area" is defined in the Planning Code 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, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of Projects, including but not limited to transportation and transit fees, open space, art, and child care requirements or in-lieu fees, dedications, housing (including affordable housing) requirements 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, SFPUC Capacity Charges, and any fees, taxes, assessments, or impositions, imposed by any Non-City Agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.
- 1.57 "**Initial Approvals**" means the City approvals, entitlements, and permits listed on Exhibit C.
 - 1.58 "**Initial Term**" is defined in <u>Section 2.2</u>.
- 1.59 "Later Approval" or "Later Approvals" means any land use approvals, entitlements, or permits from the City or any City Agency, other than the Initial Approvals, that are consistent with the Initial Approvals (except in the case of a Later Approval that properly and expressly amends an Initial Approval) and are necessary or advisable for the implementation of the Project, including design review approvals, demolition permits, grading permits, site permits,

building permits, sewer and water connections, major and minor encroachment permits, permit addenda or amendments, street and sidewalk modifications, street improvement permits, permits to alter, licenses, certificates of occupancy, transit stop relocation permits, improvement plans, Subdivision Maps, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the Initial Approvals or an earlier obtained Later Approval 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 effective 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 <u>Section 5.8.4</u>.
 - 1.62 "Law Adverse to Developer" is defined in Section 5.8.4.
 - 1.63 "Litigation Extension(s)" is defined in Section 11.5.1.
 - 1.64 "Losses" is defined in Section 4.6.
 - 1.65 "Maker Space" is defined in Exhibit D.
- 1.66 "Material Change(s)" means any modification that would (i) materially alter the rights, benefits or obligations of the City or Developer under this Agreement, including a material reduction in the Community Benefits or Impact Fees and Exactions applicable to the Project, (ii) modify the permitted uses of the Project Site from those permitted under the Approvals, or (iii) extend the Term.
 - 1.67 "Material IP Amendment" is defined in Section 11.3.2.
- 1.68 "**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.
- 1.69 "MMRP" means that certain mitigation monitoring and reporting program attached as Exhibit F.
- 1.70 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site to secure an obligation made by the applicable property owner.

- 1.71 "**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 a Foreclosure.
 - 1.72 "Mortgagee's Default Notice" is defined in Section 10.3.
- 1.73 "Municipal Code" means the San Francisco Municipal Code. All references to any part of the Municipal Code mean that part of the Municipal Code in effect on the Operative Date, as the Municipal Code may be modified by changes and updates that are adopted from time to time in accordance with <u>Section 5.4</u> or by permitted New City Laws as set forth in Section 5.6.
 - 1.74 "New City Laws" is defined in <u>Section 5.6</u>.
- 1.75 "**Non-City Agency**" means federal, state, and local governmental agencies that are independent of the City and not parties to this Agreement.
 - 1.76 "Non-City Regulatory Approval(s)" is defined in Section 3.6.
 - 1.77 "Non-Material IP Amendment" is defined in Section 11.3.2.
 - 1.78 "Notice of Pending Default" is defined in Section 9.3.
- 1.79 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.
- 1.80 "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.
 - 1.81 "Operative Date" is defined in Section 2.2.
- 1.82 "Party" and "Parties" is defined in the opening paragraph of this Agreement and also includes any party that becomes a party to this Agreement, such as a Transferee (each during its period of ownership of all or part of the Project Site).
 - 1.83 "PDR" is defined in Recital A.
 - 1.84 "**Pending Default**" is defined in Section 9.3.
 - 1.85 "**Phase**" is defined in <u>Section 3.1</u>.
 - 1.86 "Planning Code" means the San Francisco Planning Code.
- 1.87 "Planning Commission" means the Planning Commission of the City and County of San Francisco.
- 1.88 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

- 1.89 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.
- 1.90 "**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 City practice on a City-Wide basis.
- 1.91 "**Project**" means the development project as described in <u>Recital B</u> and Exhibit B, together with Developer's rights and obligations under this Agreement.
- 1.92 "**Project Change**" means any modifications to the Project that (i) are inconsistent with the Project SUD, including changes to permitted uses, development standards, and parking ratios set forth therein, (ii) are inconsistent with or require amendments to the MMRP, or (iii) require a new or supplemental environmental impact report.
- 1.93 "**Project Site**" is defined in <u>Recital A</u>, and more particularly described in Exhibit A.
- 1.94 "**Project SUD**" means Planning Code Section 249.7, as adopted by the Board in Ordinance No. [____].
 - 1.95 "Public Health and Safety Exception" is defined in Section 5.8.1.
- 1.96 "Public Improvements" means the facilities, both on and off the Project Site, to be improved, constructed and dedicated by Developer as specified in the Infrastructure Plan and, upon completion in accordance with this Agreement, accepted by the City. The Public Improvements include the Streetscape Improvements located in the entire width of the public right-of-way adjacent to the Project Site, and all infrastructure and public utilities within such streets (such as electricity, water and sewer lines but excluding any non-municipal utilities), and intersection improvements (including medians, curbs, signaling, traffic controls devices, signage, and striping). The Public Improvements also include infrastructure subject to review and approval by the SFPUC and the SFMTA, as specified in the Infrastructure Plan. The Public Improvements do not include any privately owned facilities or improvements in the public right-of-way.
- 1.97 "Public Improvement Agreement" means an agreement entered into between Developer and City for completion of Public Improvements pursuant to the City's Subdivision Code and Subdivision Regulations, or an equivalent agreement.
 - 1.98 "PW" means San Francisco Public Works.
 - 1.99 "Second Extended Term" is defined in <u>Section 2.2</u>.

- 1.100 "SFMTA" means the San Francisco Municipal Transportation Agency.
- 1.101 "SFPUC" means the San Francisco Public Utilities Commission.
- 1.102 "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 thenapplicable City requirements.
- 1.103 "Streets Sub-Area" means the area shown in Exhibit A-2, generally consisting of the public right-of-ways surrounding the Project Site.
- 1.104 "Streetscape Improvements" means the streets, sidewalks, curbs, gutters, bicycle pathways (if any), general right-of-way configurations, parking and loading areas, and associated landscaping, all as set forth in the Infrastructure Plan attached to this Agreement as Exhibit P.
 - 1.105 "Subdivision Code" means the San Francisco Subdivision Code.
- 1.106 "Subdivision Map" means any map that Developer submits for the Project Site with respect to the Project under the Subdivision Map Act and the Subdivision Code, which may include, but not be limited to, tentative or vesting tentative subdivision maps, final or vesting final subdivision maps and any tentative or final parcel map, or transfer map, including for condominium units, and including phased final maps to the extent authorized under an approved tentative subdivision map.
- 1.107 "**Subdivision Map Act**" means the California Subdivision Map Act, California Government Code Section 66410 *et seq*.
- 1.108 "TCO" means a first certificate of occupancy, including a temporary or final certificate of occupancy.
 - 1.109 "Tentative Street Improvement Permit" is defined in Section 3.4.2.
 - 1.110 "**Term**" is defined in <u>Section 2.2</u>.
- 1.111 "**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, the adoption or certification of the FEIR 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.

- 1.112 "Transfer," "Transferee" and "Transferred Property" have the meanings set forth in <u>Section 12.1</u>, and in all events exclude (i) a transfer of ownership or membership interests in Developer or any Transferee, (ii) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including space leases in Buildings), and (iii) the placement of a Mortgage on all or a portion of the Project Site.
- 1.113 "**Transportation Demand Management**" means the Project benefits described in Exhibit J-1.
 - 1.114 "Vested Elements" is defined in Section 5.1.
- 1.115 "Workforce Agreement" means the Workforce Agreement attached as Exhibit I.

2. EFFECTIVE DATE; TERM

- 2.1 <u>Effective Date</u>. This Agreement shall take effect (the "**Effective Date**") on the first date upon which both of the following have occurred: (i) the full execution and delivery of this Agreement by the Parties; and (ii) the date the Enacting Ordinances are effective as described in the Enacting Ordinances.
- 2.2 Term. The initial term of this Agreement shall commence upon the date that the Enacting Ordinances are effective as described in the Enacting Ordinances (the "Operative Date") and shall continue in full force and effect for twenty (20) years thereafter unless extended or earlier terminated as provided herein ("Initial Term"). If Developer (i) Commences Construction of a Building during the Initial Term, (ii) delivers the applicable Associated Community Benefits identified in the Community Benefits Schedule, and (iii) is not then in Default under this Agreement, then Developer shall have the right to extend this Agreement for an additional five (5) years beyond the Initial Term (the "First Extended Term") by delivering to the City, at any time during the last year of the Initial Term, a notice of extension. The First Extended Term shall be effective automatically upon Developer's delivery of the extension notice unless Developer has not met the criteria in the foregoing sentence at the time it sends the notice, in which case the City may reject the notice by written notice to Developer, subject to Developer's notice and cure rights under this Agreement. Nothing in this Section 2.2 shall limit the City's rights and remedies pursuant to this Agreement in the event of Developer's nonperformance, including without limitation those in Administrative Code Chapter 56.

Developer shall have the potential ability to extend this Agreement for an additional five (5) years beyond the First Extended Term (the "Second Extended Term") by delivering to the City, at any time during the last year of the First Extended Term, a notice of extension. The decision to grant or deny the Second Extended Term shall be made by the Planning Director in their sole discretion, and Developer's protection from new Impact Fees and Exactions will be limited during the Second Extended Term as provided in Section 5.7.2. The term of this Agreement (the "Term") shall mean the Initial Term plus, if applicable, the First Extended Term and the Second Extended Term, unless earlier terminated as provided herein. The Term shall be extended for each day of a Litigation Extension. The term of (i) the Conditional Use Authorization for a Planned Unit Development, and (ii) the Design Standards and Guidelines shall be for the longer of the Term or the term otherwise allowed under Applicable Law. In addition, due to the unique characteristics of the Project (including that there is no anticipated subdivision, only two parcels, and two Buildings), the term of any design review application approval pursuant to the SUD shall be for the longer of the Term or the term otherwise allowed under Applicable Law. The term of any Subdivision Map shall be for the longer of the Term (as it relates to the applicable parcel) or the term otherwise allowed under the Subdivision Map Act.

3. GENERAL RIGHTS AND OBLIGATIONS

- 3.1 <u>Development of the Project</u>. Developer shall have the vested right to develop the Project in accordance with and subject to the provisions of this Agreement, and the City shall consider and process all Later Approvals for development of the Project in accordance with and subject to the provisions of this Agreement. The Project will be developed in phases (each, a "**Phase**"), which may overlap as set forth in the Approvals. The Parties acknowledge that Developer (i) has obtained all Approvals from the City required to Commence Construction of the Project, other than any required Later Approvals, and (ii) 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 Project SUD, and the attainment of any required Later Approvals and any Non-City Approvals.
- 3.2 <u>Workforce</u>. 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 attached as <u>Exhibit I</u>.

3.3 <u>Public Power.</u> No later than forty-five (45) days prior to Developer's submittal for a Site Permit or Street Improvement Permit, Developer will provide the SFPUC with all Project information the SFPUC requires to determine the feasibility of providing SFPUC electric service to the Project Site. The SFPUC will complete a feasibility study and notify Developer whether it can feasibly provide SFPUC electric service within thirty (30) days after the date that Developer provides to the SFPUC all Project information needed to complete the feasibility study described in Administrative Code Section 99.2(b). Developer agrees that if the SFPUC determines it is feasible to provide electricity for the Project Site, then the SFPUC will be the exclusive power provider to the Project Site. The SFPUC power will be provided under the SFPUC's Rules and Regulations Governing Electric Service and at rates that are comparable to rates in San Francisco for comparable service from other providers.

3.4 Construction of Public Improvements.

3.4.1 No Cost to City. Developer shall undertake the design, development, and installation of the Public Improvements at no cost to the City, except for removal of those City owned encroachments as described in the Infrastructure Plan. Public Improvements shall be designed and constructed and shall include those improvements and facilities as reasonably required by the applicable City Agency that is required to accept, and in some cases operate and maintain, the Public Improvement, consistent with the Infrastructure Plan and in keeping with the then-current applicable Citywide standards and requirements of the City Agency, as if it were to design and construct the Public Improvement on its own at that time or as otherwise approved by PW or the applicable City Agency in accordance with this Agreement and the Subdivision Code. Without limiting the foregoing, Developer shall Complete all Public Improvements in accordance with the Infrastructure Plan and applicable Approvals in a good and diligent manner, without material defects, and in accordance with City-approved construction documents.

3.4.2 <u>Tentative Approval of Street Improvement Permits</u>. As described in <u>Section 3.4.7</u>, the Parties do not expect development of the Project to necessitate a subdivision of the Property pursuant to the Subdivision Map Act and have agreed upon the process for approval of a "**Tentative Street Improvement Permit**" as described in this <u>Section 3.4.2</u> for the build out of the Streets Sub-Area and Public Improvements. Such process is intended to substantially replicate the requirements for approval of a Tentative Subdivision Map pursuant to the Subdivision

Map Act and the City's Subdivision Code, with respect to design, construction, and completion of public improvements. Developer shall submit a Street Improvement Permit application no later than submitting a building permit application or Phase application for each Building or Phase, and shall obtain a Tentative Street Improvement Permit from PW to identify the specific proposed Public Improvements required in connection with that Building or included in that Phase. Each Street Improvement Permit application submittal for a Building or Phase must substantially conform to (i) the Approvals, including the Infrastructure Plan, and (ii) materials that would otherwise be required of a Tentative Subdivision Map submittal for required Public Improvements pursuant to the Subdivision Code and Subdivision Regulations. At Developer's election, such submittal may propose issuance of separate Tentative Street Improvement Permits for different sub-phases, and may include reasonable requests for waiver, or deferral of, or exceptions to, certain standard requirements. PW shall diligently and expeditiously review and comment on the Street Improvement Permit submittal, in coordination with other City Agencies as applicable. In considering a Street Improvement Permit submittal, the City acknowledges and agrees that it has exercised its discretion in granting the Approvals, including the Infrastructure Plan, and any conditions imposed by the City must be consistent with such Approvals. After the determination that the Tentative Street Improvement Permit submittal is complete and in substantial conformance with the Approvals, the Director of PW shall conditionally approve a Tentative Street Improvement Permit for the relevant Phase of development and shall adopt conditions of approval for issuance of a Street Improvement Permit. No public hearing shall be required by PW prior to approval of a Tentative Street Improvement Permit.

3.4.3 <u>Street Improvement Permit</u>. Before the start of work on any Public Improvements for any Building or Phase, Developer shall obtain a Street Improvement Permit and enter into a Public Improvement Agreement with PW for the Public Improvements required in connection with that Building or included in that Phase, together with adequate security consistent with the Subdivision Code and the applicable Public Improvement Agreement (which may include bonds, letters of credit, or other security satisfactory to the City and meeting the requirements of the Subdivision Code). Prior to issuance of any final Street Improvement Permit with respect to the Project, Developer shall cause any then-existing Mortgagee to provide its authorized signature on such final Street Improvement Permit. At Developer's election, Developer may seek issuance

of separate Street Improvement Permits for different sub-phases, and may include reasonable requests for waiver or deferral of, or exceptions to, certain standard requirements.

3.4.4 Existing Off-Site Conditions. As described in the Infrastructure Plan, there exist various encroachments into the Streets Sub-Area from adjacent properties and nonconforming conditions on properties adjacent to the Streets Sub-Area that are not owned or controlled by Developer (the "Existing Off-Site Conditions"). In recognition of these conditions and Developer's commitment to complete the Public Improvements throughout the Streets Sub-Area, the City acknowledges that the Project as shown in the Infrastructure Plan may require certain exceptions from the standards in the Subdivision Regulations, as described in Exhibit V. Developer and City shall follow the process described in the Infrastructure Plan for the Existing Off-Site Conditions. For any waiver or exemption not described in Exhibit V, Developer shall comply with the City's existing processes to seek any necessary waivers or exemptions.

3.4.5 <u>Regulatory Approvals</u>. Developer shall obtain all necessary permits and approvals (including approval of all design and construction plans) from any responsible agencies having jurisdiction over each Public Improvement. Without limiting the foregoing, Developer shall obtain all necessary permits and approvals: (i) from the SFMTA of the plans and specifications for Public Improvements that are under SFMTA jurisdiction, (ii) from the SFPUC of the plans and specifications for Public Improvements that are under SFPUC jurisdiction, and (iii) from PW of the plans and specifications for all Streetscape Improvements in the public right-of-ways. In deciding whether to approve, conditionally approve, or deny a permit or approval, each City Agency is subject to the requirements of the Initial Approvals and this Agreement, including Sections 5.3 and 5.5.

3.4.6 Scope and Timing for Completion of Public Improvements. On or before issuance of the TCO for a new Building, Public Improvements that are required to serve that new Building (if any, as identified and except as otherwise provided in the Infrastructure Plan and the Community Benefits Schedule) must be Completed and either (i) accepted by the Board of Supervisors or (ii) if not accepted by the Board of Supervisors, Developer and the City must have entered into an agreement governing the use of and liability for the applicable Public Improvements until accepted by the Board of Supervisors that is reasonably acceptable to the PW Director with regard to Public Improvements within PW jurisdiction, the SFPUC General Manager with regard to Public Improvements within SFPUC jurisdiction, and the SFMTA Director of

Transportation with regard to Public Improvements within SFMTA jurisdiction. The Parties agree to work in good faith to enter into such agreements as may be needed to ensure that City's process for acceptance of Public Improvements does not delay the issuance of certificates of occupancy when the applicable Public Improvement is Completed and ready for its intended use. The Parties agree that it shall be deemed unreasonable for any City Agency to refuse to issue the certificate(s) of occupancy if the Parties have entered into an agreement described in Section 3.4.3(a)(ii) and all conditions in such agreement have been met. For avoidance of doubt, the streetscape and infrastructure improvements funded by the Market Zone Streetscape Funding provided by Developer pursuant to Exhibit D will be installed by PW pursuant to Exhibit J, and will not be required to be Completed prior to issuance of a TCO for a new Building.

3.4.7 Dedication and Acceptance of Fee Title and Public Improvements.

Exempt Conveyance. The Parties acknowledge and agree (a) that (i) the legal boundaries of the Project Site owned in fee title by Developer as of the Effective Date include portions of the public right-of-ways, and certain additional areas as shown within the "Assessor's Block Line" on Exhibit A-3 that are intended to become part of the public right-ofways (collectively, the "Dedication Area"), (ii) in connection with development of the Public Improvements, Developer agrees to transfer to the City fee title to the Dedication Area, which shall substantially conform to the area described and depicted in Exhibit A-3, (iii) Developer has not applied for, and the Initial Approvals do not include approval of, any Subdivision Map, and (iv) Developer and City expect that conveyance of fee title to the Dedication Area will be processed by City as an "exempt conveyance" that will not require a Subdivision Map pursuant to the Subdivision Map Act and Appendix B, Section VIII of the Subdivision Regulations. As a condition to City's acceptance of fee title to the Dedication Area, Developer shall request and obtain a Certificate of Compliance from the City and County Surveyor for review and filing, and shall concurrently prepare and file a Record of Survey to memorialize the newly established boundaries of the Developer-owned parcels and provide evidence of their physical locations.

(b) <u>Developer Obligations</u>. In connection with issuance of a Street Improvement Permit, Developer shall provide the City with an offer of improvements of all Public Improvements within the applicable Phase, or in connection with an applicable Building, in accordance with the Subdivision Code, the applicable Public Improvement Agreement, and Subdivision Map or Tentative Street Improvement Permit conditions of approval (if any), and an

offer of dedication of fee title (or an easement, if acceptable to the City in its sole discretion) to the Dedication Area, substantially in the form of grant deed attached as Exhibit S. At any time after Completion, for all Public Improvements, Developer shall make a written request to the City to initiate acceptance of such Public Improvements and fee title in accordance with the Subdivision Code, the Public Improvement Agreement, and this Agreement. With any such request, Developer shall satisfy all prerequisites to and conditions of acceptance for such Public Improvements and fee title and shall submit all needed materials associated with the request. Following Developer's submittal of all required materials, each applicable City Agency having jurisdiction will diligently and expeditiously process the acceptance request and PW will introduce an acceptance ordinance and materials to the Board of Supervisors. As provided in the City's ordinance approving this Agreement, the Director of Property is authorized to accept or grant on behalf of the City any easements, licenses, or other agreements concerning real property, whether such easements, licenses, or agreements are temporary, interim, or permanent, that the Director of Property and the affected City Agency, in consultation with the City Attorney, determines are reasonably necessary in furtherance of implementing the Project, whether on or off the Project Site, and on terms acceptable to the Director of Property in the Director's sole discretion.

(c) <u>Consideration for Transfers</u>. Notwithstanding the provisions of Chapter 23 of the Administrative Code, no appraisal shall be required for the Developer's transfer of fee title in the Dedication Area to the City, or for the City's vacation of any right-of-way interest in the former alignment of La Salle Avenue, as described in subsection (d), provided that the acreage of the real property to be transferred in fee title by Developer to City is equal to or greater than the acreage of the real property interests to be vacated and quitclaimed by City. The City shall not be required to pay any additional consideration for any net gain in real property associated with such transfer.

(d) <u>La Salle Avenue</u>. City may have certain right-of-way and sewer easement rights in the former alignment of La Salle Avenue between Selby Street and Rankin Street within the Project Site, as depicted in the Infrastructure Plan, which may currently affect Developer's title in the Project Site. City acknowledges that in order for Developer to develop the Project as currently contemplated in this Agreement, it likely will be necessary for City to vacate or otherwise terminate such easements in La Salle Avenue. City agrees to cooperate and work in good faith with Developer to determine what access or rights of the public, if any,

City has in La Salle Avenue, to pursue a street vacation of rights of the public in La Salle Avenue if necessary to clear title, and to quitclaim any such interest to Developer, subject in all respects to the approval and any conditions of the Board of Supervisors. In addition, City agrees to cooperate and work in good faith with Developer to determine what sewer easement rights, if any, City has in La Salle Avenue, to negotiate terms of a resolution in good faith, and to pursue vacating and quitclaiming such sewer related rights in La Salle Avenue if necessary to clear title, subject in all respects to the approval and any conditions of the SFPUC and the Board of Supervisors.

- 3.5 <u>Maintenance and Operation of Public Improvements</u>. From and after the City's acceptance of the Public Improvements, the City shall maintain and operate the Public Improvements in accordance with customary City standards; provided that if City in its sole discretion approves any Public Improvements that do not comply with City standards, then City may condition its issuance of a Tentative Street Improvement Permit on Developer's agreement to maintain such non-standard Public Improvements.
- 3.6 Non-City Regulatory Approvals for Public Improvements. The Parties acknowledge that certain Public Improvements, most particularly those under or about the I-280 freeway structure above Selby Street, may require the approval of governmental agencies ("Non-**City Agencies**") that are independent of the City and not a Party to this Agreement. The Non-City Agencies may disapprove installation of such Public Improvements, making such installation Developer will use its commercially reasonable efforts to identify proposed impossible. modifications to Public Improvements, as applicable, to address the concerns of and obtain approval from such Non-City Agencies. Any such modifications shall be subject to approval by the City in its reasonable discretion, provided, however, that the City agrees that modifications which (i) substantially conform to the design of the Public Improvements approved by City through an approved set of street improvement plans or other City permit, and (ii) do not reduce the quality of materials to be used or increase the maintenance obligations or costs to the City, shall be deemed reasonable and approved by the City. The City will cooperate with reasonable requests by Developer to obtain permits, agreements, or entitlements from Non-City Agencies for each such improvement and as may be necessary or desirable to effectuate and implement the development of the Project in accordance with the Approvals (each, a "Non-City Regulatory Approval"). The City's commitment to Developer under this Section 3.6 is subject to the following conditions:

- (a) Throughout the permit or approval process for any Non-City Regulatory Approval, Developer shall consult and coordinate with each affected City Agency in Developer's efforts to obtain the Non-City Regulatory Approval, and each such City Agency shall cooperate reasonably with Developer in Developer's efforts to obtain the Non-City Approval;
- (b) Developer shall not agree to conditions or restrictions in any Non-City Regulatory Approval that could create: (1) any obligations on the part of any City Agency unless the City Agency agrees to assume such obligations at the time of acceptance of the Public Improvements, or (2) any restrictions on City-owned property (or property to be owned by City under this Agreement); unless in each instance, the City, including each affected City Agency, has previously approved the conditions or restrictions in writing and in the City's sole discretion; and
- (c) Developer shall bear all costs associated with applying for, obtaining, and complying with any necessary Non-City Regulatory Approval and any and all conditions or restrictions imposed as part of a Non-City Regulatory Approval. Developer shall pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-City Regulatory Approval.
- 3.7 <u>Continuing City Obligations</u>. Certain Non-City Regulatory Approvals may include conditions that entail special maintenance or other obligations that continue after the City accepts the dedication of Public Improvements (each, a "Continuing Obligation"). Standard maintenance of Public Improvements, in keeping with City's existing practices, shall not be deemed a Continuing Obligation. Developer must notify all affected City Agencies in writing and include a clear description of any Continuing Obligation. Each affected City Agency must approve the Continuing Obligation in writing in its reasonable discretion before Developer agrees to the Non-City Regulatory Approval and the Continuing Obligation. Upon the City's acceptance of any Public Improvements that have a Continuing Obligation that was approved by the City as set forth above, the City will assume the Continuing Obligation and notify the applicable Non-City Agency.

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

4.1 <u>Community Benefits Exceed Those Required by Existing Ordinances and Regulations</u>. 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 <u>Article 4</u> (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 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 Building or other development milestone in connection with implementation of the Project, as described in the Community Benefits Schedule attached as Exhibit N to this Agreement or as described elsewhere in this Agreement (each, an "Associated Community Benefit"). Upon Developer's Commencement of Construction of a Building or reaching of a milestone indicated in the Community Benefits Schedule, Developer's obligation to perform the Associated Community Benefits tied to that Building shall survive the expiration or termination of this Agreement to the date of completion of the Associated Community Benefit. The timing for delivery or completion of the Associated Community Benefits and Public Improvements shall be as set forth in this Agreement, as further specified in the Community Benefits Schedule and the Infrastructure Plan. Time is of the essence with respect to the completion of the Associated Community Benefits and Public Improvements.

- 4.1.1 <u>Community Benefits</u>. Developer shall provide the following Associated Community Benefits as specified in <u>Exhibit N</u>:
- (a) the Streetscape Improvements, as further described in Exhibit P;
- (b) the Affordable PDR Program benefits and other small business, community, and PDR support, as further described in Exhibit D;
- (c) the Workforce Agreement benefits, as further described in Exhibit I;
- (d) the Transportation Demand Management benefits and other transportation-related support, as described in <u>Exhibit J</u>; and
 - (e) the Sustainability measures, as described in Exhibit L.
- 4.1.2 <u>Performance of Community Benefits</u>. Whenever this Agreement requires Completion of an Associated Community Benefit at or before the Completion of or receipt of TCO for a Building, the City may withhold a TCO for that Building until the required Associated

Community Benefit is Completed or, in the case of a Public Improvement, Developer has provided the City with adequate security for completion of such Associated Community Benefit in a commercially reasonable form (e.g., a bond or letter of credit) as approved by the Planning Director and the head of the City Agency with jurisdiction over the type of Associated Community Benefit that is incomplete, in their reasonable discretion (following consultation with the City Attorney). In the case of an uncompleted Associated Community Benefit that is required to be Completed pursuant to the Community Benefits Schedule based on a milestone that is not a TCO for a Building or is not a Public Improvement, the City may withhold issuance of any Later Approval until (i) the required Associated Community Benefit is Completed, or (ii) in lieu of withholding such Later Approval, the Planning Director and the head of the City Agency with jurisdiction over the type of Associated Community Benefit that is incomplete, on behalf of the City and in their sole discretion, may enter into an agreement with Developer providing for Developer's Completion of the Associated Community Benefit and adequate security for such Completion. In determining the need for and reasonableness of any such security, the PW Director (for Associated Community Benefits that are Public Improvements) or the Planning Director (for Associated Community Benefits that are not Public Improvements) and the head of the appropriate City Agency shall consider any relevant existing or proposed security, such as any bonds required under the Subdivision Map Act.

4.2 Reliance on FEIR for Future Discretionary Approvals. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (i) the FEIR contains a thorough analysis of the Project and feasible alternatives, (ii) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (iii) 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 FEIR, in accordance with applicable Laws, in all future discretionary actions related to the Project; provided that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA. For informational purposes, the Planning Department has prepared a document titled "SF Gateway Project Building Permit Application EIR Consistency Review Process," dated March 26, 2025 (as

may be subsequently revised), which provides a methodology for reviewing future building permit applications for tenants proposing tenant improvements to operate within the Project.

- 4.2.1 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 or for causing the completion of all Mitigation Measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the FEIR 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, as reasonably determined by the Planning Director. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary Later Approval resulting from Material Changes or Project 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 Project Changes, or otherwise to address significant environmental impacts as defined by CEQA created by an Approval; provided, however, any such conditions must be in accordance with applicable Law.
- 4.3 <u>Nondiscrimination</u>. 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.

4.4 <u>City Cost Recovery.</u>

- 4.4.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in <u>Section 5.7</u>.
- 4.4.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Initial Approvals and Later Approvals.

4.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Initial 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 4.4.4 from the City.

4.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing City 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 nonconfidential 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 City 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 4.4.4. Developer's obligation to pay the City Costs shall survive the termination or expiration of this Agreement. In no event shall Developer have any 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.

4.4.5 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. The Parties may agree to utilize the meet and confer process set forth in Section 9.2 to resolve any disputes related to a City Costs Invoice. 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.
- 4.5 <u>Prevailing Wages</u>. Developer agrees that all persons performing labor in the construction of the Public Improvements and any work in the Streets Sub-Area as defined in <u>Exhibit A-2</u> shall be paid not less than the highest prevailing rate of wages for the labor so performed consistent with the requirements of Section 6.22(e) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and Developer shall include this requirement in any construction contract entered into by Developer for any such improvements. Upon request, Developer and its contractors will provide to City any workforce payroll records as needed to confirm compliance with this Section. Without limiting the foregoing, Developer shall comply with all applicable state law requirements relating to the payment of prevailing wages, and to the extent there is any difference between the requirements of such state law requirements and Section 6.22(e) of the Administrative Code, the stricter requirements shall apply to the construction of the Public Improvements.
- 4.6 <u>Indemnification of City</u>. 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 Developer's failure to perform any obligation under this Agreement, (ii) Developer's failure to comply with any Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the 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 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 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 for a period lasting the longer of four (4) years after the expiration or termination of this Agreement or the expiration of the statute of limitations applicable to a particular third-party claim, 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.

5. VESTING AND CITY OBLIGATIONS

- 5.1 <u>Vested Rights</u>. By 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. Developer shall have the vested right to develop the Project as set forth in the Approvals and this Agreement, including 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, and the provisions for open space, vehicular access, loading, and parking (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 Developer's right to the Vested Elements, and Developer shall have the right to seek and obtain Later Approvals at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval, once granted, shall be deemed an Approval for purposes of this Section 5.1.
- 5.1.1 <u>Waiver of State Density Bonus Law and Similar Laws</u>. The Parties acknowledge that various state and local laws, including but not limited to the State Density Bonus Law (California Government Code § 65915 *et seq*), the Affordable Housing Bonus Program

(Planning Code section 206 et seq.), and Planning Code Section 207, as they may be amended from time to time, generally allow additional residential and/or non-residential density and modifications to development requirements for residential or mixed-use developments in exchange for the inclusion of a percentage of on-site below market rate units, or the dedication of land suitable for the construction of on-site affordable housing units. By entering into this Agreement, and adopting the Approvals, City is allowing significantly more development than what is allowed under the pre-existing zoning and more than what would be allowed under pre-existing zoning in conjunction with the State Density Bonus Law, Affordable Housing Bonus Program or any other state or local commercial, industrial, or residential development bonus program. By entering into this Agreement, Developer voluntarily and intentionally waives its ability to use the State Density Bonus program, the Affordable Housing Bonus Program, and Planning Code Section 207, as they may be amended from time to time, or any other process or mechanism allowed under state or local law now or in the future, to increase, modify, expand or change the amount of development, both residential and non-residential, on the Project Site, from the Project as described in and regulated by this Agreement and the Approvals. Developer agrees to pursue development on the Project Site solely within the regulatory framework of the Approvals, with the understanding that the only allowed modifications, exceptions and variances to the Project are those pursuant to the parameters and processes explicitly established in the Project SUD, Design Standards and Guidelines, and Conditional Use Authorization for a Planned Unit Development for such modifications and changes, and that are approved at the sole discretion of the City. City would not be entering into this Agreement and approving this Project, including the Project SUD, Zoning Map amendments, and Vested Elements, were the Developer to be able to use any other development bonus in conjunction therewith, and City has negotiated the public benefits and other provisions of this Agreement based on the specific land use program as established in the Project SUD as adopted, including the Zoning Map amendments, inclusive of the modification processes allowed therein and as may be approved in the future by the City.

5.1.2 Applicability of AB 98. On January 1, 2025, Assembly Bill 98 (2024) became effective statewide, as codified at California Government Code section 65098 *et seq.* ("AB 98"). AB 98 prescribes statewide design and operational standards for proposed new or expanded developments that include "logistics uses," as defined in Government Code section 65098(d), beginning January 1, 2026. AB 98 provides that a logistics project that was "subject to

a commenced local entitlement process" prior to September 30, 2024 is not subject to AB 98, unless no "development activity" occurs within five years of entitlement approvals. The Parties acknowledge and agree that (i) the Project is proposed to include "logistics uses" within the meaning of AB 98 that may exceed 250,000 square feet, (ii) the Project was subject to a commenced local entitlement process prior to September 30, 2024 and therefore is not subject to the requirements of AB 98 unless no development activity occurs within five years of entitlement approvals, and (iii) unless AB 98 is amended or construed by a court with proper jurisdiction to the contrary, the City shall consider Developer's submittal of an application for a Site Permit or Street Improvement Permit to be conclusive evidence of development activity for purposes of AB 98. Notwithstanding the foregoing, the Parties also acknowledge and agree that the Project substantially complies with the design and operational criteria set forth in Government Code section 65098.1(a), including the requirements for a "Tier 1 21st century warehouse" as defined in section 65098(g).

- 5.2 <u>Existing Standards</u>. 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 Operative Date ("Existing Standards"), as the same may be amended or updated in accordance with <u>Section 5.4</u> or with permitted New City Laws as set forth in <u>Section 5.6</u>, (iii) California and federal law, as applicable, and (iv) this Agreement (collectively, "Applicable Laws"). The Enacting Ordinance includes express waivers and amendments to Chapter 56 consistent with this Agreement.
- 5.2.1 <u>Code Waivers</u>. Pursuant to the Enacting Ordinance and this Agreement, certain provisions of the San Francisco Municipal Code are waived.
- 5.2.2 <u>No Implied Waiver of Codes</u>. Except as expressly set forth in the Enacting Ordinance and this Agreement, nothing in this Agreement constitutes an implied waiver or exemption of the Subdivision Code or the Public Works Code. For any waiver or exemption other than those set forth in the Enacting Ordinance or this Agreement, Developer shall comply with the City's existing processes to seek any necessary waivers or exemptions. The City's failure to enforce any part of the Subdivision Code or Public Works Code shall not be deemed a waiver of its right to do so thereafter, but it shall not override the Approvals standards set forth in Sections 3.4.4, 5.2, 5.3, and 5.4.

- 5.2.3 General Plan Consistency Findings. The Parties acknowledge that the Project is consistent with the City's General Plan and the General Plan Consistency Findings are intended to support all Later Approvals that are consistent with the Approvals. To the maximum extent practicable, the Planning Department shall rely exclusively on the General Plan Consistency Findings when processing and reviewing all Later Approvals, including proposed Subdivision Maps and any other actions related to the Project requiring General Plan determinations; provided Developer acknowledges that the General Plan Consistency Findings do not limit the City's discretion in connection with any Later Approval that (a) requires new or revised General Plan consistency findings because of Material Changes, Project Changes, or amendments to any of the Approvals, or (b) is analyzed in the context of a future General Plan amendment that is a non-conflicting New City Law.
- 5.3 <u>Criteria for Later Approvals.</u> Developer shall be responsible for obtaining any required Later Approval before Commencement of Construction, or any demolition or partial demolition of existing structures, for which such Later Approval is required. The City, in granting the Approvals described in Exhibit C (the "Initial Approvals") and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals. The City shall not disapprove applications for Later Approvals based upon an item or element that is consistent with the Approvals and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). The City may condition a Later Approval in a manner consistent with the Approvals or as 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 Applicable Laws and otherwise in accordance with the City's customary practice and this Agreement. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" under this Agreement.

5.4 <u>Strict Building Code Compliance</u>.

5.4.1 <u>City-Wide Building Codes</u>. Notwithstanding anything in this Agreement to the contrary, except as otherwise provided in <u>Exhibit R</u> (Applicable Impact Fees and Exactions, <u>Exhibit V</u> (List of Required Exceptions to Subdivision Regulations to Implement Infrastructure Plan), and <u>Section 5.4.2</u>, when considering any application for a Later Approval, the

City or the applicable City Agency shall apply the then-applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Green Building Code, Plumbing Code, Fire Code, or other uniform construction codes applicable on a City-Wide basis.

5.4.2 Sidewalks, Streets and Infrastructure. By entering into this Agreement, the City's Board of Supervisors and the City Agencies have reviewed and generally approved the Streetscape Improvements, as set forth in the Infrastructure Plan (including the plans incorporated therein), as consistent with the City's central policy objective to ensure street safety for all users while maintaining adequate clearances, including for fire apparatus vehicles and utilities. Nothing in this Section 5.4.2 limits the SFPUC's and/or PW's right to object to any rightof-way configuration if, after receiving detailed design documents and/or construction documents, the SFPUC or PW determines that changes to Existing Standards create a conflict with infrastructure shown in the Infrastructure Plan such that the required infrastructure cannot be installed to then-Existing Standards in the proposed right-of-ways, so long as such determination is made either (i) before approval of a Tentative Street Improvement Permit as set forth in Section 3.4.2, or (ii) after the issuance of such permit and based on changes to the design requested by the Developer or field conditions not accurately shown in the permit documentation that would prevent installation of the infrastructure as designed. Except as otherwise expressly provided in the Infrastructure Plan, nothing in this Section 5.4.2 limits the SFPUC's and/or PW's right to disapprove the treatment or condition the treatment of any existing permitted or unpermitted encroachments in the public right-of-way. Except as provided in the two foregoing sentences, no City Agency with jurisdiction may object to a Later Approval for any of the Buildings or Streetscape Improvements due to the proposed width or design of a sidewalk, pathway, or street, unless such objection is based upon the applicable City Agency's reserved authority to review Engineering Design for compliance with Applicable Laws or other authority under State law. In the case of such objection, then within five (5) business days of the objection being raised (whether raised formally or informally), representatives from Developer, PW, the Planning Department and the objecting City Agency shall meet and confer in good faith to attempt to find a mutually satisfactory resolution to the objection. The City Agencies and Developer agree to act in good faith to resolve the matter quickly and in a manner that does not conflict with Applicable Laws.

As used in this Agreement, "Engineering Design" means professional engineering work as set forth in the Professional Engineers Act, California Business and Professions Code Sections 6700 *et seq*.

5.4.3 Applicability of Utility Infrastructure Standards. Nothing in this Agreement will preclude the City Agencies from applying then-current standards and New City Laws for utility infrastructure for each Later Approval if (i) the standards for utility infrastructure as applied City-Wide are compatible with and would not require a material redesign to previously approved plans for the work, provided that such plans have been approved pursuant to issued and unexpired permits or are converted into issued permits within two (2) years of the plans having been approved, subject to extensions for Excusable Delay, and (ii) the standards are compatible with, and would not require in a material manner, any retrofit, modification (including the construction of new supplementary systems or improvements), removal, reconstruction, or redesign of what was previously built as part of the Project. If Developer claims that the City's request for changes to design or construction documents violates the preceding sentence, it will submit to the City reasonable documentation to substantiate its claim, including bids, cost estimates, or other supporting documentation. The Parties agree to meet and confer in accordance with Section 9.2 to resolve any dispute regarding the application of this Section. If the Parties do not agree following the meet and confer period, either Party may request mediation in accordance with Section 9.2.2, provided that the mediator selected must be a licensed engineer that meets standards applicable pursuant to the California Professional Engineers Act. In the event the Parties are unable to resolve the dispute pursuant to Section 9.2, then either Party may seek judicial relief for any dispute relating to the application of this Section.

5.5 <u>Denial of a Later Approval</u>. If the City denies any application for a Later Approval that implements a Building or Public Improvements, such denial must be consistent with <u>Section 5.3</u> and Applicable Laws, and the City must specify in writing the reasons for such denial and suggest modifications required for approval of the application. Any such specified modifications shall be consistent with 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 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.

- Laws, plans or policies adopted by the City or adopted by voter initiative after the Operative Date ("New City Laws") shall apply to the Project and the Project 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. As used in this Section 5.6 and Section 5.4.3, the adjective "material" means a significant and adverse impact to the cost, time, or other term or phrase it modifies, as compared with what the cost, time, or other term or phrase it modifies would be without such impact.
- 5.6.1 <u>Conflicting New City Laws</u>. 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 any part thereof; otherwise impose any density or square footage requirements; require any reduction in the square footage or number of proposed Buildings; change the location of proposed Buildings; change or reduce other improvements from that permitted under the Approvals; or alter the definition of Gross Floor Area;
- (b) limit or reduce the height, bulk, or massing of the Project, or any part thereof, or otherwise require any reduction in the height, bulk, or massing of individual Buildings, including reduced building floorplates or increased modulation or articulation requirements than are permitted under the Approvals;
- (c) limit, reduce, or change the amount of parking and loading spaces, or location of ramp configuration, vehicular access, parking or loading for the Project and Project Site from that permitted under the Approvals;
- (d) limit any land uses for the Project and Project Site from those 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 described in this Agreement;

- (g) require modifications to existing or proposed utility infrastructure unless permitted by <u>Section 5.4.3</u> hereof;
- (h) require the issuance of permits or approvals or impose new conditions to the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals that are (i) required on a City-Wide basis, (ii) relate to the construction of improvements, and (iii) do not prevent construction, materially and unreasonably delay construction, or materially and unreasonably increase the costs of design or construction of the Project as intended by this Agreement;
- (i) 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, excluding the City's ability to implement energy or water conservation standards or other resiliency or sustainability measures that are imposed on a City-Wide basis to similarly situated properties;
- (j) materially and adversely limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;
- (k) increase the required square footage of the Affordable PDR Program, change the affordability levels for the Affordable PDR Program, control or limit common area dues or amenity charges, or place restrictions on the right to alienate, transfer or otherwise dispose of property as provided in the Affordable PDR Program contained in Exhibit D; or
- (l) impose new or modified Impact Fees and Exactions on the Project as expressly prohibited by <u>Section 5.7.2</u>.
- 5.6.2 <u>Subdivision Maps</u>. Notwithstanding the process for obtaining a Tentative Street Improvement Permit described in <u>Section 3.4.2</u>, 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 in lieu of or after completing the process detailed in <u>Section 3.4.2</u>, and to subdivide, reconfigure, or merge parcels within the Project Site as may be necessary or desirable in order to develop a particular part of the Project as generally described in <u>Exhibit B</u> and depicted in <u>Exhibit B-1</u>. The specific boundaries of Development Parcels, if different from those existing at the Operative Date or as established via exempt conveyance in accordance with <u>Section 3.4.7(a)</u>, shall be set by Developer and subject to approval by the City during such

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. If there are outstanding obligations in a Tentative Street Improvement Permit that relate to a parcel for which Developer later files a Subdivision Map application, then such obligations shall be incorporated into the applicable Subdivision Map and the Subdivision Map Act (including the City's Subdivision Code and Subdivision Regulations) shall address all such outstanding items. Prior to recording any final Subdivision Map with respect to the Project, Developer shall cause any then-existing Mortgagee to provide its authorized signature on such final Subdivision Map (or any other written approval permitted under Applicable Law.)

5.6.3 <u>Developer Election of New City Laws</u>. Developer may elect to have a New City Law that conflicts with this Agreement applied to the Project, or the Project Site (or in the case of a Transferee, to the portion of the Project Site owned by the Transferee), 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 as to the Project (or portion thereof) or the Project Site (or portion thereof), as applicable; provided that the New City Law may not result in the reduction of an Associated Community Benefit. In addition, if the application of the New City Law (i) would constitute a change to the Infrastructure Plan or increase the liability or obligations of the City, then application of the New City Law will require the concurrence of any affected City Agency, and (ii) would be a Material Change, then application of the New City Law will require Board approval.

5.7 Fees and Exactions.

5.7.1 <u>Generally</u>. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this <u>Section 5.7</u> and <u>Exhibit R</u> (Applicable Impact Fees), and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (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 <u>Section 5.7</u> 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.

5.7.2 <u>Impact Fees and Exactions</u>. During the Initial Term and the First Extended Term, no Impact Fees and Exactions shall apply to the Project or components thereof except for those Impact Fees and Exactions specifically set forth in Exhibit R (the "Applicable Impact Fees and Exactions"). Annual inflation adjustments at the rate specified in Planning Code Section 409 shall be applied to the Applicable Impact Fees and Exactions from the Operative Date until paid. The Project will be eligible for the Fee Deferral Program contained in Building Code Section 107A.13.3, pursuant to Planning Code Section 403 as it exists on the Operative Date, regardless of phase of development during the Term. Notwithstanding anything to the contrary in Planning Code Section 403, for any Building that has received a site permit on or before November 1, 2026, subject to extensions for Excusable Delay, and then receives a First Construction Document within thirty (30) months of site permit approval, a thirty three percent (33%) reduction of Applicable Impact Fees and Exactions shall be applied. The Parties acknowledge and agree that the Impact Fees and Exactions are subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined. For avoidance of doubt, the provisions of Planning Code Section 402(e)(1)-(2) pertaining to modification, extension, or renewal of a development application shall not apply to the Project, and Planning Code Section 402(e)(4)(B) shall not be interpreted to allow for the Planning Department to assess applicable fees at the earlier of site or building permit issuance.

During the First Extended Term, the rates of the Impact Fees and Exactions shall be reset to the then-current Municipal Code requirements. During the Second Extended Term, if approved, (i) the rates of the Impact Fees and Exactions shall be reset to the then-current Municipal Code requirements, and (ii) Developer shall be subject to any new Impact Fees and Exactions that apply to the Project or the applicable portion thereof, so long as the new Impact Fee and Exaction is (y) generally applicable on a City-Wide basis for similar land uses or on a City-Wide basis for similarly situated properties, and (z) does not pertain to those items listed in Exhibit R of this Agreement.

5.7.3 <u>Processing Fees.</u> 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.

5.7.4 <u>SFPUC Capacity Charges</u>. Developer shall pay all applicable SFPUC Capacity Charges when due at the rates in effect from time to time in connection with the construction of the Project.

5.8 Changes in Federal or State Laws.

Notwithstanding any provision in this 5.8.1 City's Exceptions. 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 changes to 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 generally applicable on a City-Wide basis for similar land uses or on a City-Wide basis for similarly situated properties 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. If the Parties are not able to reach agreement on such dispute following the meet and confer process in Section 9.2, then Developer or City may seek judicial relief with respect to the matter.

5.8.2 <u>Changes in Federal or State Laws</u>. If federal or state laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Operative 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 5.8.4, as applicable.

- 5.8.3 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 that would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the 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.
- 5.8.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 5.8 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 5.8 would materially and adversely affect or limit the Community Benefits (a "Law Adverse to 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 5.8.4, 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 either party shall have the right to seek available remedies at law or in equity to maintain the benefit of the bargain or alternatively to seek termination of this Agreement if the benefit of the bargain cannot be maintained in light of the Law Adverse to Developer or Law Adverse to City.
- 5.9 <u>No Action to Impede Approvals</u>. Except and only as required under <u>Section 5.8</u>, 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 5.6.1.

- Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify in writing to Developer, a potential Transferee, a potential lessee or ground lessee of a lease term of thirty-five (35) years or more, a potential lender to Developer or a Transferee, or a potential investor in Developer or a Transferee, that to the Planning Director's actual knowledge after inquiry to PW and OEWD: (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, or 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, describing the nature and extent of any such Defaults, and (iv) stating the findings of the City with respect to the most recent annual review performed pursuant to Section 8. If Developer requests that the City certify as to any additional matters, the City will confer and work expeditiously and in good faith with Developer to provide such certification that is reasonably satisfactory to Developer, provided that the Planning Director shall certify only as to his or her actual knowledge without duty of inquiry, and the City shall not have any obligation to certify as to any matters that are unreasonable, overly broad, inconsistent with this Agreement, involve legal conclusions, or are subjective in nature. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request.
- 5.11 Existing, Continuing, 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 consistent with the Approvals is subject to Planning Code Section 178 and the applicable provisions of Section 5. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Project Site's zoning and the Approvals.
- 5.12 <u>Taxes</u>. 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 Section 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) the City shall not institute, on its own initiative, any tax or assessment targeted or directed at the Project, including 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.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any Phase or portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, except that Developer must complete any Associated Community Benefits as set forth in Section 4.1 pursuant to the Community Benefits Schedule (Exhibit N) if such Associated Community Benefits obligation has been incurred. 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. Notwithstanding the foregoing, the City retains authority to reject any Developer request for temporary or interim Public Improvements or deferral of the construction of the permanent Public Improvements and can require permanent Public Improvements with each Phase, unless such temporary or interim Public Improvements are provided for in the Infrastructure Plan.

7. MUTUAL OBLIGATIONS

- 7.1 Notice of Fulfilled Associated Community Benefits, 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 a Building or Phase and all of the Associated Community Benefits tied to that Building or Phase have been Completed, the City and Developer shall execute and record a Notice of Fulfilled Associated Community Benefits in the form attached as Exhibit H for the applicable Building or Phase.
- 7.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Initial 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 Initial 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 will act as the City's lead agency to facilitate coordinated City review of applications for the Project.
- 7.3 Third-Party Challenge. Upon City's notification of a Third Party Challenge, Developer shall assist and cooperate with the City at Developer's own expense in connection with any such 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.

- 7.3.1 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 (whether Commencement of Construction has occurred 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 (other than, in the case of a partial termination by Developer, any defense costs with respect to the remaining portions of the Project). 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 Site, 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.
- 7.3.2 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.
- 7.4 <u>Good Faith and Fair Dealing</u>. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Initial Approvals and any Later Approvals.
- 7.5 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, the Initial Approvals and any Later 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.

8. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

8.1 <u>Annual Review</u>. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Operative Date), at the beginning of the second week of each January following the Operative Date 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 in any calendar year shall not waive the Planning Director's right to do so later in the calendar year, provided that the Planning Director shall conduct no more than one review each calendar year.

- 8.2 <u>Review Procedure</u>. In conducting the required annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 8.2.
- 8.2.1 Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days or less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter (a "Compliance Letter") to the Planning Director confirming, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, the status of Later Approvals that have been sought and/or granted, and compliance with the requirements regarding Community Benefits, Impact Fees and Exactions, and the environmental mitigation measures identified in the FEIR. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director may elect to waive Developer's obligation to provide backup documentation with a Compliance Letter if no significant construction work occurred on the Project during that year, or if such documentation is otherwise not deemed necessary by the Planning Director. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.
- 8.2.2 <u>City Report</u>. 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 on the basis of substantial evidence that Developer has not complied in good faith with the terms and conditions of this Agreement, determines that the public interest would be served by further review, or if a member of the Planning Commission or Board of Supervisors requests further review, then the City shall conduct a public hearing and 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 reasonable costs incurred by the City under this Section shall be included in the City Costs.

8.2.3 Effect on Transferees. If a Developer has effected one or more Transfers so that its interest in the Project Site is divided among multiple Developers at the time of an annual review, then that annual review shall be conducted separately with respect to each Developer, each Developer shall submit the materials required by this Article 8 with respect to the portion of the Project Site owned by such Developer, and the City review process will proceed as one for the entire Project. Notwithstanding the foregoing, the Planning Commission and Board of Supervisors shall make their determinations and take their actions separately with respect to each Developer pursuant to Chapter 56. If there are multiple Developers and the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Chapter 56 and this Agreement in connection with a determination that a Developer has not complied with the terms and conditions of this Agreement, such action by the 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.

8.2.4 <u>Default</u>. The rights and powers of the City under this <u>Section 8.2</u> 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 a Default by Developer.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

- 9.1 <u>Enforcement</u>. As of the date of this Agreement, 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.
- 9.2 <u>Meet and Confer Process</u>. Before sending a Notice of Pending Default in accordance with <u>Section 9.3</u>, the Parties shall attempt to resolve any dispute or disagreement over the interpretation or implementation of this Agreement (other than disputes regarding City Costs recovery which may be subject to this <u>Section 9.2</u> if elected by the Parties pursuant to <u>Section 4.4.5</u>) or any failure to perform or fulfill any obligations under this Agreement by meeting and conferring in good faith at the designated City staff levels using the steps below; 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 <u>Section 9.3</u> would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement.

9.2.1 First Level. The initial City staff level to discuss any apparent default, dispute, or disagreement between the Parties that has not been resolved at the project staff level is: (i) for disputes related to matters under the jurisdiction of PW, the manager of the Infrastructure Task Force; (ii) for disputes related to matters under the jurisdiction of SFPUC, the appropriate manager; (iii) for disputes related to matters under the jurisdiction of the Planning Department, the principal planner; and (iv) for all other disputes, the assigned OEWD project manager (as applicable based on the matter, the "First-Level City Contact"). Developer's first-level contact is the project manager for the Project. Developer's first-level contact and the First-Level City Contact will use good faith efforts to attempt to resolve the matter within ten (10) business days following a request by the other Party. If the First-Level meeting set forth in this Section 9.2.1 does not occur within ten (10) business days following a request by either Party, or if the Parties are unable to resolve the matter within that timeframe, then the requesting Party may proceed with the Second-Level meeting process outlined in Section 9.2.2 below.

9.2.2 Second Level. If Developer's project manager and the First-Level City Contact are unable to resolve the matter as set forth above, the matter will be elevated to the following second-level City person: (i) for disputes related to matters under the jurisdiction of PW, the PW Director, (ii) for disputes related to matters under the jurisdiction of the SFPUC, the General Manager of SFPUC, (iii) for disputes related to matters under the jurisdiction of the Planning Department, the Planning Director, and (iv) for all other disputes, the OEWD Director or their designee (as applicable based on the matter, the "Second-Level City Contact"). Developer's second-level contact is the project manager's supervisor, or such other person designated by Developer in writing. Developer's second-level contact and the Second-Level City Contact will use good faith efforts to attempt to resolve the matter within ten (10) business days following the elevation of the matter to the Second Level. If the Second-Level meeting set forth in this Section 9.2.2 does not occur within ten (10) business days following a request by either Party, or if the Parties are unable to resolve the matter within that timeframe, then the requesting Party may proceed with the Third-Level meeting process outlined in Section 9.2.3 below.

9.2.3 <u>Third Level</u>. If Developer's second-level contact and Second-Level City Contact are unable to resolve the matter within the timing set forth above, the matter will be elevated to the City Administrator or other designee of the Mayor (the "**Third-Level City Contact**"). Developer and the Third-Level City Contact will use good faith efforts to attempt to resolve the matter within ten (10) business days following the elevation of the matter to the third level.

If, despite the good faith efforts of the requesting Party, a meeting with the Third-Level City Contact has not occurred within ten (10) business days of such request, or if the Parties are unable to resolve the matter within that timeframe, 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 Pending Default under Section 9.3.

9.3 <u>Default</u>. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) calendar 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) calendar days following notice and demand for compliance (each such notice and demand for compliance shall be known as a "Notice of Pending Default," and each such failure as a "Pending Default" until the expiration of any applicable cure period.) Notwithstanding the foregoing, if any such non-monetary 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 Pending 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). If before the end of the applicable cure period the failure that was the subject of a Notice of Pending Default has been cured to the reasonable satisfaction of the Party that delivered such notice, such Party shall issue a written acknowledgment to the other Party of the cure of such failure upon the request of the curing Party. 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 or retained Developer

obligations. Accordingly, 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.

9.4 Remedies.

9.4.1 <u>Specific Performance</u>. Subject to, and as limited by, the provisions of <u>Sections 6, 9.4.3, 9.4.4</u>, and <u>9.5</u>, 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.

9.4.2 <u>Termination</u>. Subject to the limitation set forth in <u>Section 9.4.4</u>, in the event of a Default, and, if the City is the non-defaulting Party, following a public hearing at the Board of Supervisors regarding such event of Default and proposed termination, 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 in accordance with <u>Section 11.2</u>, and shall be effective upon the date set forth in the notice of termination which shall in no event be earlier than sixty (60) calendar days following delivery of the notice. Consistent with <u>Sections 9.3</u> and <u>12.3</u>, 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 and its respective portion of the Project Site.

9.4.3 <u>Limited Damages</u>. The Parties have determined that except as set forth in this <u>Section 9.4.3</u>, (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 a Default resulting from Developer's failure to perform an 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, less any amounts available to the City from security held by the City for Developer's obligation, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6, 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.

9.4.4 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 payments due the City from Developer are not made within sixty (60) calendar days of Developer's receipt of City's invoice therefor; provided, however, if a Mortgagee elects to make such payment or 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 to the City under this Agreement. The City shall have the right to withhold any (i) TCO for a Building, or (ii) Later Approval applicable to other non-TCO-based milestones described in the Community Benefits Schedule, until all of the Associated Community Benefits tied to that Building or milestone and required to be Completed are Completed in accordance with Section 4.1.2 and the Community Benefits Schedule. All of the Associated Community Benefits, including Public Improvements tied to a Building, must be Completed in accordance with the Community Benefits Schedule and the Infrastructure Plan (as applicable); provided, if the City issues a TCO or Later Approval before such items are Completed, then Developer shall work diligently and use

commercially reasonable efforts to Complete or cause Completion of such items following issuance.

- 9.5 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.
- 9.6 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 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 the 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 City Attorney's Office.

10. FINANCING; RIGHTS OF MORTGAGEES

- 10.1 <u>Developer's Right to Mortgage</u>. 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. Prior to commencing construction under the First Construction Document for the Project, Developer shall cause any then-existing Mortgage(s), to be subordinated to this Agreement.
- Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 10.6), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of a Foreclosure, 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, 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. 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 Associated 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 with respect to the Project Site or any part thereof that such Person obtains title to as a result of Foreclosure.
- Whenever the City delivers a Notice of Pending Default to the Developer with respect to any Pending Default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such Notice of Pending Default to each Mortgagee having a Mortgage on the real property which is the subject of the Pending 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 Pending Default remains uncured for the applicable cure period 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 "Mortgagee's Default Notice"). A delay or failure by the City to provide such Mortgagee's Default 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 Mortgagee mail a copy of any notice of default and a copy of any notice of sale under any Mortgage to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall promptly send to the City a copy of any notice of default and notice of sale.

10.3.1 Each Mortgagee is entitled to receive notices in accordance with Section 10.3 provided such Mortgagee has delivered a notice to the City in substantially the following form: "The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Development Agreement (the "Development Agreement") entered into by and between the City and County of San Francisco, a municipal corporation (the "City"), acting by and through its Planning Department, and Prologis, L.P., a Delaware limited partnership ("Developer"), to [Name of Mortgagee's borrower] ("Borrower") and holds a Mortgage of such Borrower's interest in [a portion of] the Project Site, a legal description of which is attached hereto as Exhibit A (the "Secured Property") and made a part hereof by this reference. The undersigned hereby requests that copies of notices of any Mortgagee's Default Notice (as such term is defined in the Development Agreement) from time to time given to Borrower by the City with respect to the Secured **Property** be sent to the undersigned at the following address:

Default Notice referred to in Section 10.3, 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 Pending Default, plus an additional period of: (a) sixty (60) days to cure a monetary Pending Default; and (b) one hundred twenty (120) days to cure a non-monetary Pending Default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property, and during the pendency of such cure period, the City shall refrain from exercising any of its remedies with respect to the Pending Default. If a Pending Default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the Pending Default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that

it intends to pursue Foreclosure and proceeds with due diligence thereafter; and (ii) the Mortgagee commences Foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such Foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of Pending 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 Notice of Fulfilled Associated Community Benefits. Nothing in this <u>Article 10</u> shall prevent City from suspending or discontinuing any City Agency's ongoing tasks under this Agreement pursuant to <u>Section 9.4.4</u>.

If a Mortgagee is prohibited by any process or injunction issued by any court by reason of any bankruptcy or insolvency proceeding involving Developer (or direct or indirect equity interests in Developer, as applicable) from commencing or prosecuting a Foreclosure, the times specified in this Section for commencing or prosecuting such Foreclosure shall be extended for the period of such prohibition, provided that Mortgagee shall have fully paid any past-due monetary obligations of Developer under this Agreement within the time period set forth in this Section, shall continue to pay currently such monetary obligations as and when the same fall due, and shall use commercially reasonable efforts to cause the timely lifting of such prohibition or injunction.

10.5 Multiple Mortgages.

a single portion of the Project Site or any interest therein, the lien of the Mortgagee prior in time to all others or a Mortgagee that has obtained the written consent of all Mortgagees that are senior to such Mortgagee (the "Curing Lender") will be vested with the rights under Section 10.4 to the exclusion of the holder of any other Mortgage; provided that if the Curing Lender fails to exercise the rights set forth in Section 10.4, then the holder of a junior Mortgage that has provided notice to the City in accordance with Section 10.3.1 will succeed to the rights set forth in Section 10.4, as applicable, only if the holders of all Mortgages senior to it have either failed to exercise the rights set forth in Section 10.4, or designated such Mortgagee as the Curing Lender in a written notice to the City, as applicable.

10.5.2 A Curing Lender's failure to exercise its rights under <u>Section 10.4</u>, as applicable, or any delay in the response of any Mortgagee to any notice by the City will not

extend (i) any cure period, or (ii) Developer's or any Mortgagee's rights under this <u>Article 10</u>. For purposes of this <u>Section 10.5.2</u>, in the absence of an order of a court of competent jurisdiction that is served on the City, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in San Francisco, setting forth the order of priorities of the liens of Mortgages on real property, may be relied upon by the City as conclusive evidence of priority.

10.6 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 (i) acquires title by any method to all or some portion of the Project Site (referred to hereafter as "Foreclosed Property"), and (ii) Commences Construction of any improvements under this Agreement (other than as needed to complete partially constructed improvements) with respect to the Foreclosed Property. In addition, no Mortgagee shall be subject to any construction schedule of performance or required construction completion dates (if any) applicable to the Foreclosed Property; provided that any Community Benefits Schedule requirements shall remain unchanged. 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 any applicable Associated Community Benefits under Section 4.1. Upon the occurrence and continuation of a 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 Default as provided in this Agreement.

10.7 <u>No Impairment of Mortgage</u>. 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.

10.8 <u>Cured Defaults</u>. Upon the curing of any event of Pending Default by any Mortgagee within the time provided in this <u>Article 10</u> the City's right to pursue any remedies with respect to the cured Pending Default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

- 11.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided, however, 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, 7.3.1, 9.4.2, and 11.2, 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 Agency, with the approval of that City Agency). 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 Agency). The determination of whether a proposed change constitutes a Material Change shall be made, on City's behalf, by the Planning Director following consultation with the City Attorney and any affected City Agency.
- 11.2 <u>Termination and Vesting.</u> 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 (i) any Approval pertaining to a Building or Public Improvements that has Commenced Construction in reliance thereon, and (ii) any zoning or General Plan related Approval that remains in effect, unless and until amended by the City. 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 any Building that has Commenced Construction or other milestone pursuant to the Community Benefits Schedule that Developer has achieved, 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 of this

Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this <u>Section 11.2</u> shall survive the termination or expiration of this Agreement.

11.3 <u>Amendment Exemptions</u>.

11.3.1 Later Approvals and Project Changes. 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 Project Change 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, 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. For avoidance of doubt, the Design Standards and Guidelines may be amended or modified per the procedures therein without requiring any amendment to this Agreement. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices and the Approvals, 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. Changes to the Project which are Project Changes may require modification of the Approvals (including, for example, the Project SUD), which may require legislative approval by the Board of Supervisors, but such changes will not require an amendment to this Agreement unless such change is also a Material Change. If the Parties do not amend this Agreement as set forth above when there is a direct conflict, 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.

Infrastructure Plan Amendments. Any amendments to the Infrastructure Plan shall be in writing and executed by the Parties to this Agreement and by any affected City Agency. If the Planning Director, in consultation with the City Attorney, determines that a proposed Infrastructure Plan Amendment constitutes a Material Change pursuant to this Agreement, this Agreement shall also be amended as provided in Section 11.1. Amendments to the Infrastructure Plan (whether Material IP Amendments or Non-Material IP Amendments) shall

not require an amendment of this Agreement unless they constitute a Material Change to the Agreement.

(a) Material IP Amendments. If an amendment of the Infrastructure Plan is proposed, the City shall first determine whether or not it is a Material IP Amendment. A "Material IP Amendment" means any amendment to the Infrastructure Plan that would (i) materially increase the risk of a negative impact to the City's General Fund, as determined by the City's Controller; (ii) materially increase a City Agency's liability or obligations, or materially lessen the primary benefits to the City, as determined by the Mayor; or (iii) materially increase City's liability or the risk of a negative physical or engineering design impact with regard to any Public Improvements or the public right-of-way as determined by the City Engineer. The City's Controller, the Mayor, and the City Engineer shall issue their determinations in writing unless the City waives such requirement, and if any of them conclude that a proposed amendment is a Material IP Amendment then such proposed amendment shall be a Material IP Amendment. Approval of a Material IP Amendment will require approval by Developer, the Mayor, and any City Agency whose rights, obligations, or facilities would be affected by the proposed Material IP Amendment (by its Executive Director or equivalent position, or by its Commission if required by the Commission or by Law). The City may condition approval of a Material IP Amendment in any manner deemed appropriate to address any of the effects that led to a determination that the amendment was a Material IP Amendment.

(b) <u>Non-Material IP Amendments</u>. A "**Non-Material IP Amendment**" means (i) any amendment to the Infrastructure Plan that does not constitute a Material IP Amendment, (ii) any amendment to the Infrastructure Plan that is consistent with the Subdivision Code or regulations, and (iii) any other amendment to the Infrastructure Plan that does not constitute a Material IP Amendment. The City may condition approval of a Non-Material IP Amendment in any reasonable manner deemed appropriate to address any negative effects associated with the Non-Material IP Amendment. For clarity, the exception process in the Subdivision Code does not render an Infrastructure Plan amendment a "Non-Material IP Amendment" pursuant to <u>Section 11.3.2(b)(ii)</u> simply because PW is able to grant an exception to the Subdivision Code for such Infrastructure Plan amendment. Any Non-Material IP Amendment will require the approval in writing of Developer, the Planning Director, and the PW Director, with the consent of the Executive Director or equivalent position at any City Agency whose rights,

obligations, or facilities would be affected would be affected by the proposed Non-Material IP Amendment.

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

challenging this Agreement or any of the Initial Approvals and it directly or indirectly delays this Agreement or any such Initial Approval, or if this Agreement or any of the Initial Approvals is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and the effectiveness of the Initial Approvals (starting from the date of the initial grant of the Initial Approval) shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension, or in the case of a referendum, until the referendum is resolved through certification of the election results or the formal withdrawal of the referendum (a "Litigation Extension"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

11.4.2 "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 saws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; moratoriums; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics, pandemics, 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. In no event shall the period applicable to an Excusable Delay commence before thirty (30) days prior to the date of delivery of the delayed Party's notice.

12. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

- 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") to a party (including any Mortgagee) without the City's consent, provided that it also transfers to such party (the "Transferee") all, or a correspondingly appropriate portion of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any real property required to Complete the Associated Community Benefits for such transferred 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 Developer (i.e., the person or entity that is the Developer for the Development Parcel on which the Building is located), in accordance with the requirements set forth in the Community Benefits Schedule; provided, however, that any ongoing obligations (such as landscaping maintenance) may be transferred to a 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.
- 12.2 <u>Notice of Transfer</u>. 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 the relevant Development Parcel or Parcels (the "Assignment and Assumption Agreement"), except that no advance notice shall be required for a Foreclosure by a Mortgagee. The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit G (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 and grant or withhold approval within thirty (30) days after the Director of Planning's receipt of such material changes. Notwithstanding the foregoing, any Transfer of ongoing Community Benefit obligations to a CMA as set forth in Section 12.1 shall not require the transfer of land or any other real property interests to the CMA.

- Agreement (following the City's approval of any material changes if required pursuant to Section 12.2 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 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 8 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.
- 12.4 <u>Responsibility for Performance</u>. 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 Parties acknowledge and agree that a failure to fulfill a Mitigation Measure may, if not fulfilled, 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 fulfillment of the Mitigation Measure is a condition to the other party's right to proceed, as described in the Mitigation Measure, and Developer and all Transferees assume this risk. Developer acknowledges and agrees that a failure to timely Complete an Associated Community Benefit may, if not Completed, delay or prevent a different party's ability to obtain a temporary or final certificate of occupancy for a specific Building or improvement under this Agreement if and to the extent the Completion of the Associated Community Benefit is a condition to such temporary or final certificate of occupancy pursuant to the Community Benefits Schedule, and Developer and all Transferees assume this risk.

- 12.5 <u>Constructive Notice</u>. 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.
- 12.6 <u>Rights of Developer</u>. The provisions in this <u>Article 12</u> shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development, operation, and use 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, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

13. DEVELOPER REPRESENTATIONS AND WARRANTIES

- 13.1 <u>Interest of Developer; Due Organization and Standing.</u> Developer represents that it is the sole owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a limited partnership, duly organized and validly existing and in good standing under the Laws of the State of Delaware. 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.
- 13.2 <u>No Inability to Perform; Valid Execution</u>. 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.
- 13.3 <u>Conflict of Interest</u>. 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.
- 13.4 <u>Notification of Limitations on Contributions</u>. Through its execution of this Agreement, Developer 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 (i) the City elective officer, (ii) a candidate for the office held by such individual, or (iii) a committee

controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

Developer acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

- 13.5 Other Documents. To the current, actual knowledge of Courtney Bell, Vice President of Development-Entitlements, 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.
- 13.6 <u>No Bankruptcy</u>. 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.

14. MISCELLANEOUS PROVISIONS

- 14.1 <u>Entire Agreement</u>. 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.
- 14.2 <u>Incorporation of Exhibits</u>. Except for the Initial Approvals which are listed in <u>Exhibit C</u> 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.
- 14.3 <u>Binding Covenants; Run With the Land</u>. Pursuant to Section 65868.5 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 <u>Article 12</u>, 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 <u>Article 12</u>, 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.
- 14.4 <u>Applicable Law and Venue</u>. 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.

- Construction of Agreement. The Parties have mutually negotiated the terms 14.5 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. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. 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.
- 14.6 <u>Correction of Technical Errors</u>. If by reason of inadvertence, and contrary to the intention of Developer and the City, errors are made in this Agreement in the identification or characterization of any title exception, in a legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel (provided such boundary adjustments are relatively minor and do not result in a material change as determined by the Parties counsel), in any map or drawing that is an Exhibit, or in the typing of this Agreement or any of its exhibits, Developer and the City, by mutual agreement, may correct such error by memorandum executed by both of them and replacing the appropriate pages of this Agreement. No such memorandum or page replacement shall be deemed an amendment of this Agreement.
- 14.7 <u>Project Is a Private Undertaking; No Joint Venture or Partnership.</u> The Project 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.

- 14.8 <u>Recordation</u>. 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.
- 14.9 <u>Obligations Not Dischargeable in Bankruptcy</u>. Developer's obligations under this Agreement are not dischargeable in bankruptcy.
- 14.10 <u>Survival</u>. Following expiration of the Term or earlier termination pursuant to the provisions of this Agreement, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survives the expiration or termination of this Agreement.
- 14.11 <u>Signature in Counterparts</u>. 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.
- 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 person or address in substitution of the person and address to which such notice or communication shall be given. For convenience of the Parties, copies of notices may also be given by email to the email address number set forth below or other email address as may be provided from time to time, but neither Party may give official or binding notice by email. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:	Sarah Dennis Phillips
	Director of Planning
	San Francisco Planning Department
	49 South Van Ness Avenue, Suite 1400
	San Francisco, California 94103
	email:

	City Attorney		
	City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102		
	Attn: Real Estate/Finance,		
	San Francisco Gateway Project		
To Developer:			
	email:		
	Attn:		
with a copy to:			

David Chiu

with a copy to:

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.

14.14 <u>Severability</u>. 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.

14.15 <u>MacBride Principles</u>. 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.

- 14.16 <u>Tropical Hardwood and Virgin Redwood</u>. 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.
- 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.
- 14.18 <u>Non-Liability of City Officials and Others</u>. 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.
- 14.19 <u>Non-Liability of Developer Officers and Others</u>. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee, or agent of Developer or any affiliate of Developer shall be personally liable to City, its successors and assigns, in the event of any Default by Developer, or for any amount which may become due to City, its successors and assigns, under this Agreement.

14.20 <u>No Third Party Beneficiaries</u>. There are no third-party beneficiaries to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

CITY:	Approved as to form:		
CITY AND COUNTY OF SAN FRANCISO a municipal corporation	CO, DAVID CHIU, City Attorney		
By: Sarah Dennis Phillips Director of Planning	By: Elizabeth A. Dietrich Deputy City Attorney		
RECOMMENDED:			
By: Director of Public Works	- - -		
Approved on, 20 Board of Supervisors Ordinance No			
DEVELOPER: Prologis, L.P.,			
a Delaware limited partnership By:	_		
Name:	_		
Its:	_		

State of California)	
County of San Francisco)	
personally appeared satisfactory evidence to be and acknowledged to m capacity(ies), and that by upon behalf of which the p	ne that he/she/they executed his/her/their signature(s) person(s) acted, executed Y OF PERJURY under	, who proved to me on the basis of me(s) is/are subscribed to the within instrument ecuted the same in his/her/their authorized) on the instrument the person(s), or the entity
WITNESS my hand and o	fficial 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)	
personally appeared satisfactory evidence to be and acknowledged to m capacity(ies), and that by upon behalf of which the p	ne that he/she/they executed his/her/their signature(s) person(s) acted, executed Y OF PERJURY under	, who proved to me on the basis of me(s) is/are subscribed to the within instrument ecuted the same in his/her/their authorized) on the instrument the person(s), or the entity
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