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OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code

Section 27383)

AND WHEN RECORDED MAIL TO:

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

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

FOR PROPERTY AT 5th and BRANNAN STREETS

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

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

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

RECITALS

This Agreement is made with reference to the following facts:

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

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

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

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

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

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

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

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

G. As a result of the development of the Project in accordance with this Agreement, the City as determined that additional benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These additional benefits include development of a new permanent home for the flower market, with subsidized

rents, the dedication of a housing parcel with no fee credit, onsite childcare, workforce commitments and certain public improvements as described herein.

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

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

J. The City analyzed the environmental impacts of the development density associated with the Project in the Central SOMA Plan Final Environmental Impact Report (**"Central SOMA FEIR"**), certified by the Planning Commission in Motion No. 20182, on May 10, 2018. Potential development at 2000 Marin Street, as the Temporary Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report (**"Bayview FEIR**"), which was certified by [INSERT] on March 2, 2006. On July 3,

2019, the Environmental Review Officer (**"ERO"**) issued a Community Plan Exemption ("**CPE**") and Addendum for the Project and the Temporary Site at 2000 Marin Street, including the mitigation monitoring and reporting program (**"MMRP"**). The CPE were prepared in accordance with CEQA and issued by the Planning Department in Case Nos. 2015-004256ENV. Copies of the Certificate of Determination are on file with the Board of Supervisors in File Nos. [XX] and are incorporated herein by reference.

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

L. On _____, 2019, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2019, the Board adopted Ordinance Nos. [_____] approving this Agreement (File No. 190682) and authorizing the Planning Director to execute this

Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2019.

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

AGREEMENT

1. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.21 "**City**" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City

means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

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

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

1.24 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in

connection with a City Default or which are payable by the City under Section 10.6 when Developer is the prevailing party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.51 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, including offsets for any applicable fee credits, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to the Transportation Sustainability Fee (per Planning Code Section 411A), the Jobs-Housing Linkage Fee (per Planning Code Section 413), Child Care Fee (per Planning Code Section 414), Art Fee (per Planning Code Section 429), School Impact Fee (California Education Code Section 17620), Eastern Neighborhoods Infrastructure Impact Fee (per Planning Code Section 423), or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees (including CFD special taxes due under the Central SOMA Plan), SFPUC Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws. A sample calculation of the applicable Impact Fees and Exactions is included in Exhibit P.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.89 **"Post-Development Subtenant"** means each of those Existing Subtenants and Pre-Development Subtenants who pursuant to the terms of the Tri-Party Agreement enter into a Post-Development Sublease with the Developer at the New Wholesale Flower Market.

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

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

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

1.93 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in

accordance with the City practice on a City-Wide basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.112 "**Temporary Site Approval**" means any land use approval, entitlement, or permit from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Site by the existing flower market tenants during the construction of the Project. The list of Temporary Site Approvals, and the Planning Code exceptions applicable to the Temporary Site, at 2000 Marin are included in Exhibit Q.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. EFFECTIVE DATE; TERM

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

Ordinance is effective and operative ("**Effective Date**").

2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter (the "**Initial Term**"), unless extended or earlier terminated as provided herein, provided however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to terminate this Agreement with respect to the Phase 1(a) upon completion of the Phase 1(a), including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the Phase 1(a) during the Initial Term and thereafter continues to diligently prosecute the Phase 1(a) to completion, and is not in Default (or has cured a Default pursuant to Section 10.3) under this Agreement between the date of exercise and the date the Initial Term expires, then Developer shall have the right to extend the term of this Agreement for an additional five (5) years (the "**Extended Term**") by delivering to the City, at any time during the last year of the Initial Term, a notice of extension. The 5-year extension shall be automatic upon Developer's delivery of the extension notice unless Developer is in Default (not including a Default that was cured pursuant to Section 10.3) at the time Developer sends the notice or before the start of the Extended Term, in which case the City may reject the notice by written notice of rejection to Developer. The term of this Agreement (the "**Term**") shall mean the Initial Term plus, if applicable, the Extended Term. The performance period or the term for any Approval or Later Approval shall be for the longer of the Term or the performance period or term otherwise applicable to such Approval or Later Approval. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2.3 Phasing. Developer shall complete Phase 1(a) first, before Phase1(b) or Phase 1(c), so as to complete the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) before the receipt of certificates of occupancy for the office portions of the Blocks Building or for any of the other Buildings. Subject to the requirement to complete Phase 1(a) first, Developer may complete the Phases in any order and may develop Phases simultaneously.

3. TEMPORARY AND PERMANENT FACILITY

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

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

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

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

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

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

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

3.6 Payment Option.

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

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

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

Temporary Site under Section 3.1, a proposed site will be deemed **"Viable"** if the following conditions are met: (i) the site is zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can accommodate the design and specifications set forth in Exhibit E for the Temporary Facility; (iv) the site is owned by an entity willing to enter into negotiations for the Interim Lease, consistent with the requirements of this Agreement and the Tri-Party Agreement, including the timely availability of the site, the length of term, the rents payable by the vendors with nondisturbance protections for the vendors; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit E for the Temporary Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources.

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

(a) The City receives the Payment Notice from the Tenant Association's counsel, confirming that the Tenant Association has affirmatively voted and approved, at a duly noticed and held election in accordance with the Tenant Association's bylaws, (1) the City's exercise of the Payment Option, (2) one or more proposed locations in San Francisco, acceptable to the Tenant Association, for the Permanent Site (and

identifying those sites), (3) a release of any claims by the Tenant Association against the City regarding this Agreement, the Payment Option, the Tri-Party Agreement and any other related documents, the Temporary Site and the Permanent Site, and the relocation of vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (4) a release of any claims by the Tenant Association against Developer for the Relocation Matters, but excluding all of Developer's prospective obligations under this Agreement and any other agreement between the Tenant Association and Developer; and (5) an indemnity by the Tenant Association, in favor of the City and Developer, for any claims made by any flower market vendor challenging any of the Relocation Matters; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.9 No City Liability. Following exercise of the Payment Option, OEWD and Planning staff shall use good faith efforts to assist the Tenant Association with development of the Permanent Facility at the finally selected Permanent Site. Following exercise of the Stay Option, OEWD and Planning staff shall use good faith efforts to monitor and enforce Developer's obligations to build the New Wholesale Flower Market at the Project Site. But nothing in this Agreement shall create any City liability to Developer, to the Tenant Association, or to any flower market Vendor relating to the New Wholesale Flower Market, the Permanent Facility, or to the Relocation Matters. All interested persons are given notice, and understand and agree, that completion of the New Wholesale Flower Market or the Permanent Facility will likely involve many challenges, and that no particular outcome can be guaranteed. By entering into this

Agreement, the City is not guarantying the successful completion of the replacement market or any other result. The City would not be willing to enter into this Agreement without this provision. Without limiting Developer's indemnity obligations in this Agreement, if and to the extent that City is required to expend any funds or staff time defending this Agreement or any discretionary decisions made by the City related to this Article 3 or the Relocation Matters from a claim made by the Tenant Association or any flower market Vendor, the City may reimburse itself from the Upfront PD Payments or the New Market Payment, if any (which shall, in turn, reduce the amounts available for construction of the Permanent Facility).

4. GENERAL RIGHTS AND OBLIGATIONS

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

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

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

4.4 Community Facility Districts. The City intends to form a CFD under the CFD Act to finance or seek reimbursement of certain costs as set forth in the SOMA Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the CFDs or other charges set forth in the Central SOMA Plan, or the issuance of additional bonds or other financing secured by CFD special taxes or the application of bond proceeds consistent with the SOMA Plan. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Central SOMA Plan fees or the CFD special taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in any sale agreement or lease for all or part of the Property.

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

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

5.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 5 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is tied to a specific phase of the Project, as described in the Phasing Plan or elsewhere in this Agreement (with each Phase, an "**Associated Community Benefit**"). Time is of the essence with respect to the completion of the Community Benefits.

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

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

(b) the rent subsidies described in Article 3;

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

Temporary Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or payment for the relocation to the Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party Agreement, including the requirement that all Pre-Development Subtenants shall be moved together at one time (the collective obligations in subparagraphs (a) through (c) shall be referred to as the "**Flower Market Obligations**");

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

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

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

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

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

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

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

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

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

5.2 No Additional CEQA Review Required; Reliance on CPE and Addendum for Later Approvals. The Parties acknowledge that the CPE and Addendum prepared for the Project and 2000 Marin as the Temporary Site, respectively, complies with CEQA. The Parties further acknowledge that (a) the CPE and Addendum contain a thorough environmental analysis of the Project, including the Temporary Site, and demonstrate that the Project's impacts were previously analyzed in the Central SOMA FEIR and the Addendum, as the case may be; (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings. Accordingly, the City does not intend to conduct any further environmental review or

mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the CPE and Addendum, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with the Temporary Site or a change in the location of the Temporary Site, the Permanent Site, affordable housing dedication site, or any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

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

5.3 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or

against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

5.4 City Cost Recovery.

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

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

5.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 5.5.4 from the City.

5.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the

billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 5.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

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

5.5 Prevailing Wages. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms “public work” and “paid for in whole or part out of public funds” are defined in and subject to exclusions and

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

5.6 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State

Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

6. VESTING AND CITY OBLIGATIONS

6.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Accordingly, the City in granting the Approvals and vesting them through this Agreement is limiting its future discretion with respect to Later Approvals and Temporary Site Approvals to the extent they include elements that were approved as part earlier Approvals. The criteria for City review and approval of Later Approvals is set forth in Section 6.3. Consequently, the City shall not use its discretionary authority in considering and approving an application for Later Approvals or Temporary Site Approvals to change the policy decisions reflected by the Approvals or otherwise to prevent or to delay development of the Project or the Project Variant as set forth in the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access and parking (including parking ratios), and the Prop. M allocation made for the Project on the Effective Date (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals and Temporary Site Approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval and Temporary Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

6.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 6.6, and (iii) this Agreement (collectively, "**Applicable Laws**").

6.3 Criteria for Later Approvals. Developer shall be responsible for obtaining applicable Later Approvals before the start of construction that requires such approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval based upon an item or element that is consistent the Approvals, and shall consider all such applications in accordance with City's customary practice, normal discretion and Applicable Laws, subject to the requirements of this Agreement. The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Approvals and the Planning Code, and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" or the Temporary Site under this Agreement.

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

one of more Later Approvals, the City shall use reasonable efforts to promptly commence and complete all steps necessary to act on such applications in a timely way and in accordance with applicable Laws.

6.5 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Mechanical Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, and the Public Works Code and Subdivision Code and other uniform construction codes applicable on a City-Wide basis. This shall not be construed to prohibit exceptions, equivalencies, or other administrative relief available under such Codes.

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

6.7 New City Laws. All future changes to Existing Standards and any other

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

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

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

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

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

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

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

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the demolition of existing buildings at the Project

Site, except as expressly set forth in this Agreement;

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

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

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

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

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 6.7.2); or

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

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

6.7.3 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and

development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge parcels within the Project Site as is required or may be desirable in order to developer a particular phase of the Project the Project or to lease, mortgage or sell all or some portion of it. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals or Later Approvals.

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

have been made for the entire Project (i.e., up to 2,061,380 GSF of office development undertaken consistent with the Project).

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

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

Planning Commission approval described above will apply to Phase 1(b) except to the extent such application would be prohibited by applicable law.

(c) Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which each Prop. M allocation is granted under this Agreement to obtain a site permit for office development for the applicable phase of the Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

6.9 Fees and Exactions.

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

6.9.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project (or the Project Variant) or components thereof except for (i) those Impact Fees and

Exactions specifically set forth on Exhibit P, and (ii) the SFPUC Capacity Charges, as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the Parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined; provided, in determining the amount of the Impact Fees and Exactions during the Initial Term only (as extended by Litigation Extension, if any), the rates will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid. During the Extension Term (if any), Developer shall be subject to any increase or decrease in the fee amount payable and any changes to the methodology of calculation (e.g., use of a different index to calculate annual increases), but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date. No Impact Fees or Exactions shall apply to the use of the Temporary Site for pre-existing uses or for new spaces constructed for flower market tenants.

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

6.10 Changes in Federal or State Laws.

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

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

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

such Law, subject to the provisions of Section 6.8.4, as applicable.

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

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

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

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

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

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

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

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

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

7. NO DEVELOPMENT OBLIGATION

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

8. MUTUAL OBLIGATIONS

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

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

avoids delay and redundancies.

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

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

shall effect a termination of this Agreement as to any other portion of the Project.

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

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

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

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

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

9.2 Review Procedure. In conducting the required initial and annual reviews of

Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 9.2.

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

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

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

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

10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

10.1 Enforcement. The only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

10.2 Meet and Confer Process. Before sending a notice of default in accordance

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

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

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

10.4 Remedies.

10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 10s.4.3, 10.4.4, and 10.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

10.4.2 Termination. Subject to the limitation set forth in Section 10.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 10.3 and 13.3, there are no cross-defaults under this Agreement, and therefore if there is more than one “Developer”

(as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

10.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 10.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 10.6, and (5) the City shall have the right to administrative penalties or

liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

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

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

10.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in

this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

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

11. FINANCING; RIGHTS OF MORTGAGEES

11.1 Developer’s Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the

Effective Date, there are no Mortgages on the Project Site.

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

11.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the

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

11.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 11.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, provided that such period is tolled for any period during which the Mortgagee is prohibited from proceeding with

foreclosure proceedings, e.g. due to a bankruptcy filing, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

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

11.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage

or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

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

12. AMENDMENT; TERMINATION; EXTENSION OF TERM

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

12.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the

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

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

12.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and

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

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

12.5.1 Litigation and Referendum Extension. If any litigation is filed challenging the Central SOMA Plan, the Central SOMA Plan FEIR, this Agreement, or an Approval having the direct or indirect effect of delaying this Agreement or any Approval (including but not limited to any CEQA determinations), including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, this Agreement, or an Approval is suspended pending the outcome of an

electoral vote on a referendum, then the Term of this Agreement and all Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, the date of the initial grant of such Approval) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

12.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's

obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

13.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be

the sole responsibility of the applicable Transferee (*i.e.*, the person or entity that is the Developer for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

13.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review within thirty (30) days after receipt, with such review being limited to confirming the Assignment and Assumption Agreement satisfies the requirements of this Agreement. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 13.1 shall not require the transfer of land or any other real property interests to the CMA.

13.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 13.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and

Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 9 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

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

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

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

14. DEVELOPER REPRESENTATIONS AND WARRANTIES

14.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this

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

14.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

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

14.4 Notification of Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a

contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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

14.6 No Bankruptcy. Developer represents and warrants to the City that

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

15. MISCELLANEOUS PROVISIONS

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

15.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

15.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 13, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the

provisions of this Agreement, including without limitation Section 13, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

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

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

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

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

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

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

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

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

To City:

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

with a copy to:

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

To Developer:

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

with a copy to:

Reuben, Junius, & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104

Attn: Daniel Frattin or Tuija Catalano

15.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

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

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

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

15.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

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

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

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

Approved as to form:

DENNIS J. HERRERA, City Attorney

By:

Charles Sullivan
Deputy City Attorney

APPROVED AND AGREED:

By: _____
Naomi Kelly, City Administrator

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited liability company

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

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____

Title: _____

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

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

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

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

By: _____
Edward D. Reiskin, Director of Transportation

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

By: _____
Charles Sullivan, Deputy City Attorney

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

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State of California)
County of San Francisco)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____