

AMENDED AND RESTATED CONDITIONAL PROPERTY EXCHANGE AGREEMENT

by and between

EQX JACKSON SQ HOLDCO LLC,  
as Developer

and

CITY AND COUNTY OF SAN FRANCISCO,  
as the City

For the improvement and exchange of

530 Sansome Street and 447 Battery Street  
San Francisco, California

[\_\_\_\_\_], 2025

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<sup>1</sup> To be created prior to document execution.

AMENDED AND RESTATED CONDITIONAL PROPERTY EXCHANGE AGREEMENT  
(530 Sansome Street and 447 Battery Street, San Francisco)

THIS AMENDED AND RESTATED CONDITIONAL PROPERTY EXCHANGE AGREEMENT (this “**Agreement**”) dated for reference purposes only as of [\_\_\_\_], 2025, is by and between EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company (“**Developer**”), and the CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county (the “**City**”).

RECITALS

A. The City owns that certain improved real property at 530 Sansome Street in San Francisco (Lot 17, Block 0206), as more particularly described in Exhibit A-1 (the “**Existing City Property**”). The Existing City Property is improved with the San Francisco Fire Station 13 (the “**Existing Fire Station**”).

B. Developer owns that certain improved real property adjacent to the Existing City Property at 425 Washington Street and 439-445 Washington Street (Lots 13 and 14, Block 0206), as more particularly described in Exhibit A-2 (the “**Existing Developer Property**”).

C. Developer and the City are parties to a Conditional Property Exchange Agreement dated as of July 30, 2020, as amended by a First Amendment to Conditional Property Exchange Agreement, dated as of July 27, 2022, and a Second Amendment to Conditional Property Exchange Agreement dated as of March 27, 2023 (as amended, the “**Original CPEA**”), which was approved and ratified by the City’s Board of Supervisors under Resolution No. 220-19, Resolution No. 242-20, Resolution No. 543-21, and Resolution 096-24. The Original CPEA was entered into in connection with Developer’s plans for a project (the “**Original Project**”) to demolish the Existing Fire Station and the buildings on the Existing Developer Property and construct an integrated 4-story replacement fire station (“**New Fire Station**”) and 19-story mixed use building with a shared subterranean garage on the Existing Developer Property and Existing City Property (collectively, the “**Original Project Site**”). The Original CPEA required the Developer to build the New Fire Station on a portion of the Existing Developer Property and, following completion, the parties were to exchange the Existing City Property for the New Fire Station and the portion of the Existing Developer Property on which it was located.

D. Related California Residential, LLC, a Delaware limited liability company that is wholly controlled by Developer’s sole member (“**Developer’s Affiliate**”), and Battery Street Holdings LLC, a California limited liability company (“**447 Battery Owner**”) are parties to an Option and Purchase Agreement for Real Property and Escrow Instructions dated as of May 7, 2024, as amended by a First Amendment to Option and Purchase Agreement for Real Property and Escrow Instructions dated as of May 31, 2024 (as amended, the “**447 Battery Purchase Agreement**”), pursuant to which Developer’s Affiliate has the option to purchase that certain improved real property adjacent to the Existing Developer Property at 447 Battery Street (Lot 2, Block 0206), as more particularly described in Exhibit B (the “**447 Battery Property**”). The 447 Battery Property is improved with an approximately 20,154 square foot, three-story building (the “**447 Battery Building**”), which was designated as a historic landmark by the City’s Board of Supervisors under Article 10 of the Planning Code by Ordinance No. 43-22 (the “**Landmark Ordinance**”).

E. On or about August 5, 2024, Developer submitted applications with City’s Planning Department to modify the Original Project to allow for a modified project (“**Project**”) that would consist of (i) demolition of the Existing Fire Station and all other existing improvements on the

Existing City Property, Existing Developer Property, and 447 Battery Property, (ii) construction of a new mixed-use tower up to 41 stories tall on the Existing City Property and Existing Developer Property (the “**Tower**”), (iii) construction of the New Fire Station on the 447 Battery Property, and (iv) installation of non-standard streetscape improvements on the entire portion of Merchant Street between Sansome Street and Battery Street. City staff and Developer also began discussions on the key terms for a development agreement under Chapter 56 of the City’s Administrative Code to facilitate the Project.

F. On December 10, 2024, the Board of Supervisors adopted Resolution No. 629-24, generally endorsing key terms for a development agreement for the Project (the “**Key Terms**”), subject to Developer and City staff mutually agreeing to an amendment to the Original CPEA for the construction of the New Fire Station on the 447 Battery Property rather than on the Original Project Site and the terms of a development agreement, which would both be subject to subsequent approval of the Board of Supervisors. On June 10, 2025, Developer submitted to the Planning Department a letter request to enter into a development agreement in general conformance with the Key Terms (the “**Development Agreement**”).

G. City staff and Developer negotiated the terms and conditions of the Development Agreement, this Agreement, and a Hotel and Fire Station Development Incentive Agreement (“**Incentive Agreement**”) in conformance with the Key Terms.

H. On July 16, 2025, the City’s Historic Preservation Commission held a public hearing, duly noticed and conducted under the Planning Code, to consider the conditional rescission of the Landmark Designation in the Planning Code Amendment Ordinance (defined below). Following the public hearing, the Historic Preservation Commission, through Resolution No. 1476, did not recommend to the Board of Supervisors conditional rescission of the Landmark Designation in accordance with the Planning Code Ordinance.

I. On July 17, 2025, the City’s Planning Commission held a public hearing, duly-noticed and conducted under the Planning Code, Government Code Section 65864 et seq., and Chapter 56 of the San Francisco Administrative Code, to consider the Project, the Development Agreement, the General Plan Amendment Ordinance, the Planning Code Amendment Ordinance, and the DA Ordinance (all as defined below). Following the public hearing, the Planning Commission, through Motion No. 21771, certified the Final Environmental Impact Report prepared for the Project (the “**FEIR**”) and, through Motion No. 21773, adopted CEQA findings for the Project (the “**CEQA Findings**”) and the Mitigation Monitoring and Reporting Measures for the Project (the “**Mitigation Measures**”). The FEIR, the CEQA Findings and the Mitigation Measures comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.; “**CEQA**”), California Code of Regulations, Title 14, Section 15000 et seq. (the “**CEQA Guidelines**”), and Chapter 31 of the San Francisco Administrative Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to a feasible mitigation. The information in the FEIR and the CEQA Findings has been considered by the City in connection with approval of this Agreement.

J. On July 17, 2025, the Planning Commission (i) recommended to the Board of Supervisors the adoption of the General Plan Amendment Ordinance (Resolution No. 21775), the Planning Code Amendment Ordinance (Resolution No. 21776), and the DA Ordinance (Resolution No. 21777), (ii) approved a Conditional Use Authorization authorizing the Project (Motion No. 21778) (the “**Conditional Use Authorization**”), (iii) approved an Office Allocation under Planning Code Sections 320-325 (Motion No. 21779), and (iv) following a joint hearing with the City’s Recreation and Park Commission and General Manager of the Recreation and Park Department, adopted shadow findings consistent with Planning Code Section 295 (the “**Shadow Findings**”), as well as findings that the Project and the Development Agreement would, 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. The above-described actions, collectively, are defined as the **“Planning Approvals.”**

K. On \_\_\_\_\_, the Board of Supervisors, having received the respective recommendations of the Historic Preservation Commission and Planning Commission, adopted (i) Ordinance No. \_\_\_\_\_, amending the Special Use District Map, Height Map, and Planning Code, including rescinding the Landmark Ordinance if City acquires the 447 Battery Property (the **“Planning Code Amendment Ordinance”**), (ii) Ordinance No. \_\_\_\_\_, amending the Downtown Area Plan of the General Plan (the **“General Plan Amendment Ordinance”**), (iii) Ordinance No. \_\_\_\_\_, approving the Development Agreement (the **“DA Ordinance”**), (iv) Ordinance No. \_\_\_\_\_, approving the Incentive Agreement, (v) Ordinance No. \_\_\_\_\_, approving a major encroachment permit, and (vi) and Ordinance No. \_\_\_\_\_, approving this Agreement to reflect the land transfers required for the Project and authorizing the Director of Property to execute this Agreement on behalf of the City. The foregoing ordinances became effective on \_\_\_\_\_. The above-described actions in this Recital K, collectively with the Planning Approvals, are defined as the **“Approvals”**.

L. In light of the foregoing, the parties have agreed to amend and restate the Original CPEA to reflect the modifications to the Original Project as set forth in the Approvals and the Development Agreement, including the exchange of the Existing City Property for the 447 Battery Property instead of the New City Parcel (as defined in the Original CPEA) and Developer’s construction of the New Fire Station on the 447 Battery Property (the **“Fire Station Project”**) in compliance with the terms of this Agreement and the Construction Management Agreement (as defined in Section 2.3).

M. Neither party would have entered into this Agreement, the Construction Management Agreement, the Development Agreement, or the Incentive Agreement but for their respective rights, and the other party’s obligations, under this Agreement, the Construction Management Agreement, the Development Agreement, and the Incentive Agreement. In addition, Developer would have not agreed to the obligation to construct the New Fire Station as required in this Agreement, the Construction Management Agreement, and the Development Agreement but for City’s Incentive Agreement obligations to disburse certain incentive payments to Developer as described, and at the times specified, in the Incentive Agreement, and City would not have agreed to exchange the Existing City Property for the 447 Battery Property but for Developer’s obligation to construct the New Fire Station on the 447 Battery Property pursuant to the Development Agreement, the Construction Management Agreement, and this Agreement.

## AGREEMENT

NOW FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Developer and the City agree as follows:

### 1. **TERMINATION OF ORIGINAL CPEA**

The Original CPEA shall be terminated in its entirety and replaced by this Agreement as of the Effective Date.

### 2. **PROJECT CONTRACTS**

2.1 **Architect; Architect Contract.** City acknowledges it has approved (a) Skidmore, Owings & Merrill (the **“Architect”**) as the architect for the Fire Station Project and (b) the

Consultant Contract between Developer and Architect dated as of May 25, 2021, as amended by Amendment No. 1 dated as of July 28, 2022, Amendment No. 2 dated as of March 19, 2024, and Amendment No. 3 dated as of March 19, 2024 (as amended, the “**Architect Contract**”). The Developer must obtain City’s prior written approval to retain a different party as architect for the Fire Station Project, which approval shall not be unreasonably withheld by the City. Developer shall provide City with prior written notice of any proposed amendment to the Architect Contract, and shall not enter into any amendment to the Architect Contract that deletes any of the applicable Municipal Code requirements described in Section 2.5(b), modifies the scope of work for the Fire Station Project, or modifies the indemnity without the City’s prior written approval, which approval shall not be unreasonably withheld by the City.

**2.2 Construction Contract; General Contractor.** Selection of the general contractor for the Fire Station Project (the “**General Contractor**”) is subject to City approval of Developer’s recommendation, which shall not be unreasonably withheld by the City. The parties have approved the form of contract for the construction of the New Fire Station attached as Schedule 1 (“**Form Construction Contract**”). The “**Final Construction Contract**” will be the Form Construction Contract with all final details included, including (i) an amount that aligns with the then-approved Project Budget and any other changes mutually approved by Developer and the City and (ii) the requirements of Section 4.4.

Developer and the City each agree to act reasonably and in good faith to reach agreement on adding the final details in the Form Construction Contract (including the contract sum and the identity of the General Contractor) and any change requested by the proposed General Contractor as soon as reasonably possible; however, Developer and the City shall have the right to approve the same in their sole and absolute discretion. Neither party shall disapprove of the Final Construction Contract on the basis of any terms or provisions contained in the Form Construction Contract. If Developer’s proposed General Contractor and the parties do not mutually agree to the Final Construction Contract within thirty (30) days following Developer’s selection of that proposed General Contractor, Developer may elect to begin negotiations with an alternative General Contractor that is proposed by the Developer and approved by the City.

If a proposed General Contractor requests changes to the Form Construction Contract as a condition to its execution, and the change is approved by Developer and the City’s Director of Property (“**Director of Property**”) but would require the approval of City’s Board of Supervisors to waive any applicable Municipal Code requirement, the Director of Property shall use good faith efforts to submit the proposed Final Construction Contract to the Board of Supervisors for approval.

**2.3 Construction Management Agreement.** Pursuant to Resolution No. 543-21, adopted by the Board of Supervisors on November 30, 2021, the parties are concurrently executing a construction management agreement (the “**Construction Management Agreement**”) for the Developer’s design and construction of the Fire Station Project. The Construction Management Agreement has been revised to require the Developer to design and construct the Fire Station Project at its sole cost, except for any City-Approved Additional Project Costs (as defined in Section 6.1(e) of the Construction Management Agreement) to be funded by City at its sole cost under the Construction Management Agreement. The parties may also elect to modify the Construction Management Agreement indemnities by the City and the Developer to the extent the modifications are commercially-reasonable and agreed to by the Director of Property (in consultation with the City’s Risk Manager, the San Francisco Fire Department, the Department of Public Works, and the City Attorney’s Office) and the Developer.

**2.4 Other Project Contracts.** Developer shall negotiate all other project contracts (each, an “**Other Project Contract**”) that it determines are necessary and appropriate to complete the Fire Station Project in addition to the Architect Contract and the Final Construction Contract

(each, an “**Other Project Contract**”). Except for any Other Project Contract that is less than \$50,000 and includes the applicable provisions set forth in Section 2.5(b) below (each, a “**Pre-Approved Project Contract**”), the Other Project Contracts each require the prior approval of Developer and the City, each acting in their reasonable discretion and taking into account any applicable City contracting requirements set forth in the Construction Management Agreement. Developer and the City each agree to act reasonably and in good faith to reach agreement on the terms of each Other Project Contract consistent with the terms of this Agreement and as soon as reasonably possible. If the Developer and the City cannot reach agreement on the terms of any Other Project Contract with the contractor for that Other Project Contract, Developer may elect to begin negotiations with an alternative party acceptable to Developer and City.

City’s approval of a proposed Other Project Contract can be conditioned on modifying it to reflect any applicable Municipal Code requirements that are not described in Section 2.5(b) or the Construction Management Agreement; provided, however, that if the Developer does not approve of any of such requirement and Closing has not yet occurred, Developer shall have the right to terminate this Agreement by delivering written notice of such termination to the City within ten (10) business days of City notifying Developer of the required modification to the Project Contract.

If a potential Other Project Contract contractor will not execute the Other Project Contract unless an applicable City Municipal Code requirement is removed and City’s Director of Property agrees to the exemption if approved by the Board of Supervisors, the parties shall use good faith efforts to expedite negotiations and seek Board of Supervisors approval of the required exemption ordinance. If (i) the Board of Supervisors subsequently does not approve the exemption ordinance, (ii) Developer and City are not able to reasonably agree to an alternative party for the required Other Project Contract, (iii) the Other Project Contract is required for the timely construction of the New Fire Station in compliance with the requirements of this Agreement, and (iv) the Closing has not occurred, then Developer shall have the right to terminate this Agreement by delivering written notice of such termination to the City within ten (10) business days following the Board of Supervisors meeting date at which the Board of Supervisors votes to disapprove of the exemption ordinance. If the exemption ordinance is not submitted to the Clerk of the Board of Supervisors for introduction at the Board of Supervisors within the thirty (30) day period (“**Submission Period**”) immediately following the date that the City’s Director of Property conditionally agrees to the exemption in writing subject to approval of the exemption ordinance by the Board of Supervisors, then Developer shall have the right to terminate this Agreement by delivering written notice of such termination to the City on or before the tenth (10<sup>th</sup>) day immediately following the expiration of the Submission Period.

## 2.5 **Project Contract Requirements.**

(a) Required Provisions. The Architect Contract, Final Construction Contract, and the Other Project Contracts are each a “**Project Contract**” and collectively the “**Project Contracts**”. Under the Construction Management Agreement, Developer has the obligation and right to enter into the Project Contracts. Except for Pre-Approved Project Contracts, Developer shall use commercially reasonable efforts to include the provisions of Section 2.5(b), Section 2.6, and Section 4.3 in all Project Contracts, each subject to such revisions or deletions as may be agreed to by the City in approving the Project Contract. Pre-Approved Project Contracts only need to include the applicable provisions of Section 2.5(b). If the Architect, the General Contractor, or any other contractor under any other Project Contract (each, a “**Project Contractor**”) refuses to include any required provision, Developer shall consult with the City on how to proceed with the contract negotiations, including whether to seek Board of Supervisors approval of an ordinance exempting such provision.

Notwithstanding anything stated to the contrary in this Agreement, any failure to include in any Project Contract any of the provisions provided for in Section 2.5(b), Section 2.6, and Section 4.3 shall not constitute a default or breach by Developer under this Agreement if the Project Contract is approved by City, provided that City shall not be required to approve any Project Contract that does not include those provisions.

(b) City Contracting Requirements. Developer shall additionally use commercially reasonable efforts to include in each Project Contract language requiring compliance, as applicable, with the provisions specified in the San Francisco Municipal Code, including but not limited to: Non-Discrimination in City Contracts and Property Contracts (Articles 131 and 132 of the San Francisco Labor and Employment Code), Tropical Hardwood and Virgin Redwood Ban (Environment Code Sections 802(b) and 803(b)), Preservative-Treated Wood Containing Arsenic (Environment Code Chapter 13), Bicycle Storage (Planning Code Article 1.5), Green Building Requirements for City Building (Environment Code Chapter 7), MacBride Principles (Administrative Code Section 12F.1 *et seq.*), Conflicts of Interest (Article III Chapter 2 of City's Campaign and Governmental Conduct Code), Campaign Contribution Limitations (Section 1.126 of City's Campaign and Governmental Conduct Code), Minimum Compensation (Article 111 of the San Francisco Labor and Employment Code), Health Care Accountability (Article 121 of the San Francisco Labor and Employment Code), and Consideration of Criminal History (Article 142 of the San Francisco Labor and Employment Code). Developer shall comply with the above requirements insofar as they relate to Developer's work under this Agreement.

**2.6 Rights and Remedies During Construction.** Developer shall use commercially reasonable efforts to include the following provisions (or provisions similar to the following provisions in all material respects) in all Project Contracts (excepting Pre-Approved Project Contracts) for the benefit of the City, unless otherwise agreed to by the City:

(a) General. The provisions of the Project Contract shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the parties to the Project Contract, or condone a breach thereunder, unless expressly agreed to by the parties in writing. All remedies provided in the Project Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

(b) No Waiver. No waiver of any breach of any provision of the Project Contract shall be held to be a waiver of any other or subsequent breach. The only waiver by the City shall be a waiver in writing that explicitly states the item or right being waived.

(c) City's Remedies for False Claims and Other Violations. A Project Contractor that fails to comply with the terms of the Project Contract, violates any applicable provision of the Workforce Agreement, submits false claims, or violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the Project Contract, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code Section 6.80 *et seq.* Additionally, a Project Contractor that submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code Section 6.80 *et seq.*

(d) Interpretation. The Project Contract shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative and Labor and Employment Codes.

**2.7 Defaults Under Project Contracts.** In no event and under no circumstances shall Developer be liable for any breach or default by a Project Contractor, or for a Project Contractor's



failure to comply with any of the applicable provisions of this Article 2, Section 4.3, or applicable law including any City law. Upon a default by a Project Contractor, and following consultation with the City and upon the City's request, Developer shall use commercially reasonable efforts to take specific remedial action against the defaulting Project Contractor, including termination of the applicable Project Contract and replacement of the applicable Project Contractor.

### **3. ADDITIONAL APPROVALS; CONSTRUCTION DOCUMENTATION; THIRD-PARTY CHALLENGES**

#### **3.1 Regulatory Approvals**

(a) Additional Approvals. Following the Effective Date, Developer shall initiate the process for any additional regulatory approvals needed from any local, State or Federal governmental agency having jurisdiction ("**Regulatory Agency**") to finalize the design of the New Fire Station and commence construction of the Project, including without limitation, building permits, street improvement permits, encroachment permits, and approvals from the Arts Commission (collectively, the "**Additional Approvals**"). Developer shall prepare, sign and submit such materials and pay such fees as may be necessary to obtain all Additional Approvals on or before the Anticipated Closing Date (as defined in Section 10.2(a) below), subject to Unavoidable Delay (as defined in Section 13.3). It is understood and agreed that Developer's sole obligation with respect to procuring the Additional Approvals is to use commercially reasonable efforts to do so. There are no assurances that Developer will be successful in procuring the Additional Approvals and Developer's failure to procure the Additional Approvals shall not be considered a default by Developer under the terms of this Agreement except to the extent arising from Developer's default of its obligations under this Section 3.1(a).

(b) Collaboration. Developer shall use commercially reasonable efforts to obtain, and shall be solely responsible for obtaining, all Additional Approvals. Developer expects the Additional Approvals will include a tentative map (a "**Tentative Map**") to merge the Existing City Property and the Existing Developer Property and create condominium parcels on the merged property. Throughout the Additional Approval application and approval process, Developer shall consult and coordinate with the Director of Property in Developer's efforts to obtain such Additional Approvals. Developer shall not seek any Additional Approval without the approval of the Director of Property, which shall not be unreasonably withheld or delayed; provided, however, that after the Closing Date, such prior approval shall only be required for Additional Approvals to the extent they apply to the New Fire Station. If the Director of Property does not approve a submittal, the Director of Property will indicate in writing the reason for the disapproval and the steps or changes to be made to obtain its approval. The Director of Property will approve, disapprove or approve conditionally each submittal in accordance with the procedures set forth in Section 15.8.

The Director of Property shall cooperate reasonably by timely reviewing Developer's applications for Additional Approvals and providing any consent to those applications to the extent required from City as owner of the Existing City Property or the 447 Battery Property, subject to any Additional Approval applications for the final design or construction of the New Fire Station conforming to the most recent Construction Documentation (as defined in Section 3.3(a)) approved by the City in the review and approval process set forth in Exhibit D to the Construction Management Agreement. If a Tentative Map application requires City's consent as owner of the Existing City Property, the Director of Property shall not withhold approval of that application as long as the Tentative Map application and Additional Approvals for that application are conditioned on Developer owning fee title to the Existing City Property. Developer and the City (acting through the Director of Property and a City project manager designated by the Director of Property) agree to work together in good faith in Developer's efforts to seek all Additional Approvals as long as this Agreement remains in effect. However, the City shall have no obligation

to incur any cost with respect to the Additional Approvals other than its staff time in collaborating with the Developer and in reviewing the Additional Approvals or applications for them; provided the costs of such staff time shall be reimbursed by Developer pursuant to the Development Agreement.

The parties agree to hold regular meetings, as needed or upon either party's request, so as to coordinate all efforts relating to the procurement of Additional Approvals. Developer shall not agree to the imposition of conditions or restrictions in connection with a permit or approval for the Fire Station Project (and, if the Closing has not occurred, the Tower) from any Regulatory Agency other than the City without the Director of Property's prior approval, which approval will not be unreasonably withheld or delayed. All submittals for Additional Approvals shall be subject to the prior review and approval of the Director of Property for consistency with the most recent plan documents approved by the City in the Construction Documentation process set forth in Exhibit D to the Construction Management Agreement at the time of that submittal; provided, however, that after Closing, such prior review and approval shall only apply to submittals for Additional Approvals to the extent applicable to the New Fire Station. If the Director of Property does not approve a submittal (which approval shall not be unreasonably withheld or delayed), the Director of Property will indicate in writing the reason for the disapproval and the steps or changes to be made to obtain its approval. The Director of Property will approve, disapprove or approve conditionally each submittal in accordance with the procedures set forth in Section 15.8.

(c) Project Budget. The "**Fire Station Plans**" shall collectively mean (i) the New Fire Station plans prepared by the Architect and dated June 7, 2024 (the "**50% Schematic Design**") and (ii) the "SFFD Fire Station Design Standards" prepared by San Francisco Public Works and dated July 31, 2025 (the "**Fire Station Design Standards**"), both as further described in Exhibit C. Developer prepared a projected project budget for the New Fire Station attached as Exhibit D (the "**Project Budget**"), which includes Developer's cost estimate for constructing the New Fire Station based on the Fire Station Plans, including the estimated fees and costs associated with procuring the Additional Approvals needed to construct the New Fire Station. City acknowledges that Developer will review and approve updates to the Project Budget as the process for Construction Documentation review and approval (the "**Construction Documentation Process**") progresses in accordance with the Construction Management Agreement.

### 3.2 Proprietary Capacity

Developer understands and agrees that the City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Developer understands and agrees that all actions and approvals by City under this Agreement are in its proprietary capacity, and neither entry by the City into this Agreement nor any approvals given by the City under this Agreement shall be deemed to imply that Developer will obtain any required Additional Approvals from City departments, boards or commissions with jurisdiction over the Project. Nothing in this Agreement shall affect or limit the rights and responsibilities of the City's Department of Building Inspection, the Planning Department, other City departments, City commissions or boards, or its Board of Supervisors with respect to the Additional Approvals for some or all of the Project, or their discretionary rights with respect to the review, approval, imposition of conditions, or rejection of any Additional Approvals. The City's Additional Approvals shall be issued or denied by the appropriate City department, commission, board, or Board of Supervisors in keeping with its standards and customary practices and without regard to this Agreement.

### 3.3 Construction Documentation.

(a) Construction Documentation. The "**Construction Documentation**" shall mean the 100% Schematic Design, the 50% Design Documents, 100% Design Documents, the

50% Construction Documents, the 100% Construction Documents, and any change orders described in and prepared pursuant to the Construction Management Agreement. The Construction Documentation is needed for the Final Construction Contract and the Additional Approvals and to obtain final pricing for the New Fire Station. Both parties shall diligently perform their respective Construction Management Agreement obligations with respect to the preparation, review and approval of the Construction Documentation. All Construction Documentation shall be consistent with the Fire Station Plans unless otherwise agreed to by the parties pursuant to the Construction Management Agreement.

(b) Proposed Modifications and Designs; Development Delays or Limitations. Neither Developer nor City shall, without the other party's prior written consent or direction, take any of the following actions (each, a "**Development Action**"): (i) propose material modifications to the Fire Station Plans that would (A) substantively alter the proposed use of the New Fire Station, (B) materially decrease or increase the proposed height of the New Fire Station, (C) materially reduce or increase the square footage of the New Fire Station, (D) materially impact the New Fire Station, or (E) materially impact the design of the Tower or materially increase the cost of developing or the schedule for constructing the Tower, or (ii) take actions or propose designs that would materially increase the cost of developing the New Fire Station or otherwise increase the then-approved Project Budget, or (iii) delay development of, or limit or restrict the availability of, necessary infrastructure serving the New Fire Station.

Neither party shall unreasonably withhold such consent; provided, however, that (i) City shall have the sole discretion to withhold approval to any Developer-proposed Development Action that is not solely required to cause the New Fire Station to comply with the applicable laws or to obtain the Additional Approvals necessary to construct the New Fire Station, and (ii) Developer shall not withhold approval of any City-proposed Development Action to the extent it is not reasonably anticipated to delay development of the Tower or the New Fire Station and the City agrees to pay for any increased Project Cost for the Fire Station Project (including Fire Station Design and Approval Costs) associated with the Development Action as a City-Approved Additional Project Cost under the Construction Management Agreement.

Article 6 and Exhibit D of the Construction Management Agreement provide further detail on the review and approval process for Development Actions by City and Developer.

(c) **Intentionally Omitted.**

(d) Design and Approval Costs. Except for the cost of any Additional Approvals needed for any [City-Approved Change Order]<sup>2</sup> (as defined in the Construction Management Agreement), which are to be paid by City under the Construction Management Agreement, Developer shall pay or cause to be paid when due all fees and costs associated with the procurement of the Additional Approvals for the Fire Station Project, together with any design development or other costs for the Fire Station Project incurred by Developer (collectively, the "**Fire Station Design and Approval Costs**"). Except to the extent for a Pre-Approved Project Contract, before engaging any contractor, Developer shall deliver to the City, for review and approval which shall not be unreasonably withheld, the name and qualifications of the third-party consultants and contractors to be engaged by Developer in connection with work on the New Fire Station (upon the City's approval, all such consultants and contractors being defined collectively as the "**Approved Contractors**").

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<sup>2</sup> Exact defined term usage may be revised in conformance with final version of Construction Management Agreement.

Following the Effective Date, when providing the City with an updated Project Budget as required in the Construction Documentation Process and for the Construction Cost Reports (as defined in the Construction Management Agreement), Developer shall also deliver to the City a detailed summary (each, a **“Fire Station Cost Report”**) of Developer’s expenditures of (i) Fire Station Design and Approval Costs and (ii) fees and costs associated with the procurement of the Additional Approvals for the Tower Project, including any design development or other costs for the Tower Project incurred by Developer to the extent such fees and costs are shared with the Fire Station Project on a pro rata basis (the **“Tower Design and Approval Costs”**). Each Fire Station Cost Report shall include a description of the services performed and costs paid by Developer and the Project schedule. The Developer agrees that it is solely responsible for the Fire Station Design and Approval Costs and Tower Design and Approval Costs, except to the extent City is required to pay any portion for a City-Approved Change Order. To the extent mutually agreed to by the Developer and the Director of Property, the parties may modify the Construction Management Agreement to include a commercially-reasonable method to ensure timely payment of the City-Approved Additional Project Costs following the Developer’s submittal of all required materials for such payment under the Construction Management Agreement.

Developer shall maintain records, in reasonable detail, with respect to all Fire Station Design and Approval Costs and Tower Design and Approval Costs, and shall provide such supporting documentation as the City may reasonably request to verify any Fire Station Design and Approval Costs for any City-Approved Change Order. Developer will also make all records available for inspection, copying and audit by the City.

(e) **Intentionally Omitted.**

(f) No City Share of Fire Station Design and Approval Costs. If this Agreement terminates for any reason, then the City shall have no obligation to reimburse Developer for the Fire Station Design and Approval Costs, Tower Design and Approval Costs, or other Project costs incurred by Developer except for City’s obligation to pay for any City-Approved Change Orders under the Construction Management Agreement; provided, however, that if this Agreement is terminated by the Developer due to a City Event of Default, the Developer shall have the remedies set forth in Section 10.6.

**3.4 Ownership of Work.** Developer shall ensure that all rights of Developer in the Construction Documentation are transferable to the City without limitation, payment to or the consent of the applicable architects and engineers, and will be transferred to the City upon completion of the New Fire Station.

**3.5 Cooperation in the Event of Third-Party Challenge.** A **“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, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the New Fire Station. In the event of any Third-Party Challenge, the parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City. 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 the defense of a Third-Party Challenge, at the City Attorney’s sole discretion. Developer shall indemnify, defend, reimburse, and hold harmless 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 except to the extent that (1) the foregoing indemnification obligation is void or otherwise

unenforceable under applicable law, (2) such Third-Party Challenge is the result of the sole negligence, willful misconduct, or fraud of any City Party, or (3) such Third-Party Challenge is the result of a City Event of Default, to the extent Developer is the prevailing party in any legal action brought by Developer against the City for that City Event of Default. Developer shall have the right to receive monthly invoices for all City costs with respect to a Third-Party Challenge.

To the extent that any action, proceeding, challenge, or judgment is entered limiting Developer's right to proceed with the New Fire Station or any material portion thereof under this Agreement and Closing has not occurred, Developer may elect to terminate this Agreement by written notice thereof to the City, and upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the parties will jointly seek to have the Third-Party Challenge dismissed, and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal (other than, in the case of a partial termination by Developer, any defense costs with respect to the remaining portions of the Project). If (a) any non-appealable action, proceeding, challenge, or judgment that limits Developer's right to proceed with the New Fire Station or any material portion thereof under this Agreement occurs after Closing (a "**Post-Closing Action**"), (b) Project construction has not yet commenced, and (c) the physical condition of the Existing City Property and the 447 Battery Property has not materially changed since Closing, then the parties shall exchange ownership of the Existing City Property and the 447 Battery Property, and Developer shall convey the 447 Battery Personal Property to City by a bill of sale in substantially the form of the 530 Sansome Bill of Sale.

If a Post-Closing Action occurs after Project construction has commenced, or construction has not commenced but the physical condition of the Existing City Property and the 447 Battery Property has materially changed since Closing, then the parties shall meet and confer to identify actions to retain the benefit of the bargain for both parties. If the parties are not able to mutually agree to such actions, the matter shall be resolved through mediation pursuant to Section 5.2 and, if necessary, through binding arbitration pursuant to Section 5.1.

The filing of any Third-Party Challenge shall not delay or stop the development, processing, or construction of the New Fire Station unless the third party obtains a court order preventing the activity. This Section 3.5 shall survive any judgment invalidating all or any part of this Agreement until the expiration of the applicable statute of limitation or statute of repose for such Third-Party Challenge.

#### **4. DESIGN AND CONSTRUCTION**

**4.1 Construction Management.** The Construction Management Agreement sets forth for Developer's obligation to review and monitor the General Contractor's monthly construction cost reports of expenditures on the New Fire Station (the "**Construction Cost Report**"). The Construction Cost Report shall include any updates to the New Fire Station schedule, including critical path items. Notwithstanding anything stated to the contrary in this Agreement, following Closing, Developer is obligated to construct the New Fire Station regardless of the final cost to obtain the Additional Approvals and construct the New Fire Station ("**Project Cost**"), subject to City's obligation to pay for any City-Approved Change Order under the Construction Management Agreement.

**4.2 Compliance with Laws.** Developer shall use commercially reasonable efforts to cause each Project Contractor to remain fully informed of and comply with the applicable provisions of the Charter, Municipal Code, ordinances and regulations of the City and other local agencies having jurisdiction over the work, and all federal and state laws and regulations in any manner affecting its Project Contract, the performance of the work, or those persons engaged therein. Developer shall require compliance with, and shall use good faith efforts to ensure all construction and materials provided under the Project Contracts shall be in full accordance with

the applicable provisions of the latest laws and requirements (to the extent applicable under the Development Agreement) of the Municipal Code sections specified in the Project Contracts, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it, as such laws and requirements may be amended, updated or supplemented from time to time. The City and its Agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. Developer shall use commercially reasonable efforts to cause Architect and General Contractor to comply with the applicable provisions of San Francisco Administrative Code Chapter 6 that are incorporated into the Architect Contract and the Final Construction Contract, respectively. To the extent applicable to Developer, Developer shall comply with all laws including the applicable provisions of the Charter, Municipal Code, ordinances and regulations of the City and local agencies having jurisdiction over the work. Developer shall cause the New Fire Station to comply with all applicable laws as of the date of Final Completion (as defined in the Construction Management Agreement). Subject to Developer's obligation to cure any failure of its obligation in the foregoing sentence, Developer shall have no obligation to ensure the New Fire Station continues to remain in compliance with applicable laws after Final Completion.

**4.3 Labor Requirements.** Developer shall comply with requirements of the Workforce Agreement attached as Exhibit F to the Development Agreement in the performance of its obligations under this Agreement and the Construction Management Agreement. The Project Contracts shall also require compliance with the applicable requirements of the Workforce Agreement.

**4.4 Completion Date; Liquidated Damages.** As specified in the Form Construction Contract, the Final Construction Contract shall require all work be substantially complete within nine hundred (900) consecutive calendar days following the Closing Date, subject to Unavoidable Delay, and final completion of the work shall occur within sixty (60) consecutive calendar days after the date the City's Department of Building Inspection issues a temporary certificate of completion for the New Fire Station ("**TCO**"), subject to Unavoidable Delay.

In addition, as specified in the Form Construction Contract and unless otherwise agreed to by the City in writing, the Final Construction Contract shall provide that time is of the essence in all matters relating to completion of the New Fire Station, and that the City will suffer financial loss if the work is not completed within the time frames set forth in this Section, plus any extensions allowed in accordance with the general conditions of the Final Construction Contract. Accordingly, the Final Construction Contract shall include liquidated damages (and not as a penalty) equal to \$4,000 for each day of delay other than Unavoidable Delay as the City's sole remedy for such delay, payable by the General Contractor to the City, for each calendar day of delay.

**4.5 Completion Guaranty.** Developer and City have agreed that on or before the Closing Date, Developer will cause The Related Companies, L.P., a New York limited partnership ("**Guarantor**"), to deliver a completion guaranty in favor of the City in the form attached hereto as Exhibit E (the "**Completion Guaranty**"), unless City, in its sole discretion, approves the delivery of the Completion Guaranty from a successor in interest to the Guarantor.

## **5. RESOLUTION OF CERTAIN DISPUTES**

## 5.1 Binding Arbitration

(a) Arbitration Matters. Each of the following is an “**Arbitration Matter**” following written notice from one party to the other party that a dispute exists as to such matter: (i) any proposed adjustment to the size of the New Fire Station under Section 3.3, (ii) the appropriateness, apportionment or amount of the cost of any City-Approved Change Order, (iii) disputes under provisions set forth in sections or exhibits to this Agreement that call for arbitration, and (iv) the City’s or Developer’s failure to approve any matter in this Agreement for which it is required to act reasonably (following mediation on the matter, if either party invokes mediation to resolve the dispute), but expressly excluding the failure to approve the Final Construction Contract or any proposed Other Project Contract that would not comply with the requirements of this Agreement and require the approval of the Board of Supervisors, which shall not be an Arbitration Matter. Following the receipt of notice of an Arbitration Matter, the parties will have thirty (30) days (or such longer time as they may agree) to attempt to resolve the Arbitration Matter through informal discussions. Notwithstanding anything stated to the contrary in this Agreement, neither the determination of whether an Event of Default has occurred nor the available remedies following an Event of Default shall be an Arbitration Matter or be subject to the provisions of this Section 5.1.

(b) Arbitration Notice. If an Arbitration Matter is not resolved by discussion as set forth in this Section 5.1, then either party may submit the Arbitration Matter to a single qualified arbitrator at JAMS in the City (“**JAMS**”) in accordance with the applicable rules of JAMS. The party requesting arbitration shall do so by giving notice to that effect to the other party (the “**Arbitration Notice**”). The Arbitration Notice must include a summary of the issue in dispute and the reasons why the party giving the Arbitration Notice believes that the other party is incorrect or in breach.

(c) Selection of Arbitrator. The parties will cooperate with JAMS and with one another in selecting an arbitrator with appropriate expertise in the Arbitration Matter from a JAMS panel of neutrals, and in scheduling the arbitration proceedings as quickly as reasonably feasible. If the parties are not able to agree upon the arbitrator, then each will select one arbitrator, and the two selected arbitrators shall select a third arbitrator. The third arbitrator selected shall resolve such dispute in accordance with the laws of the State pursuant to the JAMS Streamlined Arbitration Rules and Procedures for disputes of \$250,000 or less, and the JAMS Comprehensive Arbitration Rules and Procedures for disputes of more than \$250,000 (as applicable, the “**Rules**”).

(d) Arbitration Process. The parties shall bear their own attorneys’ fees, costs and expenses during the arbitration proceedings, and each party shall bear one-half of the costs assessed by JAMS. The parties shall use good faith efforts to conclude the arbitration within sixty (60) days after selection of the arbitrator, and the arbitrator shall be requested to render a written decision and/or award consistent with, based upon and subject to the requirements of this Agreement as soon as reasonably possible in light of the matters in dispute. The arbitrator shall have no right to modify any provision of this Agreement. If a party chooses to submit any documents or other written communication to the arbitrator or JAMS, it shall deliver a complete and accurate copy to the other party at the same time it submits the same to the arbitrator or JAMS. Neither party shall communicate orally with the arbitrator regarding the subject matter of the arbitration without the other party present.

(e) Final Determination. Subject to this Section 5.1, the parties will cooperate to provide all appropriate information to the arbitrator. The arbitrator will report his or her determination in writing, supported by the reasons for the determination. As part of that determination, the arbitrator shall have the power to determine which party or parties prevailed, wherein the prevailing party or parties shall recover all of their reasonable fees, costs and expenses

(including the fees and costs of attorneys) from the non-prevailing party or parties, to be paid within forty-five (45) days after the final decision of the arbitrator with regard to such fees, costs and expenses, and the arbitrator shall also determine whether the time spent for the Arbitration Matter is to be treated as Unavoidable Delay. Except as provided in Sections 1286.2, 1286.4, 1286.6 and 1286.8 of the California Code of Civil Procedure, the determination by the arbitrator shall be conclusive, final and binding on the parties. Additionally, notwithstanding anything to the contrary contained in the Rules, (i) the arbitrator, in deciding any Claim, shall base his or her decision on the record and in accordance with this Agreement and applicable law, (ii) in no event shall the arbitrator make any ruling, finding or award that does not conform to the terms and conditions of this Agreement, is not supported by the weight of the evidence, or is contrary to statute, administrative regulations or established judicial precedents, (iii) the arbitration award shall be a factually detailed, reasoned opinion stating the arbitrator's findings of fact and conclusions of law, and (iv) any such arbitration shall be held in San Francisco, California, unless the parties mutually agree upon some other location. By agreeing to this provision, the parties are waiving all rights to a trial by judge or jury with respect to any Arbitration Matter. The arbitrator's decision and/or award may be entered as a judgment in any court having competent jurisdiction and shall constitute a final judgment as between the parties and in that court.

## 5.2 Non-Binding Mediation

(a) Mediation Matter. Each of the following is a "**Mediation Matter**" following written notice from one party to another party that a dispute exists as to such matter: (i) a party's failure to reasonably approve the Final Construction Contract but excluding any disapproval of the Final Construction Contract or Other Project Contract by the Board of Supervisors to the extent such approval is required and (ii) the City's or Developer's failure to approve any other matter as to which it is required by this Agreement to be reasonable, but expressly excluding the City's disapproval of any proposed Other Project Contract that would not comply with the requirements of this Agreement and require the approval of the Board of Supervisors, which shall not be an Mediation Matter.

(b) Mediation Request. A party may request non-binding mediation by delivering a written request for mediation ("**Mediation Request**") to the other party. The Mediation Request must include a summary of the issue in dispute and the position of the parties, together with any backup information or documentation it elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding party may agree to meet and confer promptly with the requesting party to attempt to resolve the matter. In the absence of such agreement, or if the meet and confer does not resolve the matter promptly, the party who requested approval may submit the matter for mediation to JAMS in the City and County of San Francisco.

(c) Selection of Mediator and Process. The parties will cooperate with JAMS and with one another in selecting a mediator from a JAMS panel of neutrals and in scheduling the mediation proceedings as quickly as feasible. The parties agree to participate in the mediation in good faith. Neither party may commence or if commenced, continue, a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session. The parties will each pay their own costs and expenses in connection with the mediation, and the party that requested mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions of Sections 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any mediation.

(d) Use of Evidence. The provisions of Sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during the mediation or arbitration under this Article 5.

## 6. PROPERTY EXCHANGE



6.1 **Timing.** Upon no less than ninety (90) days after Developer delivers written notice to the City of the Anticipated Closing Date, which shall be no later than the Anticipated Closing Date, and following satisfaction (or waiver) of the City's Conditions Precedent and Developer's Conditions Precedent on the Anticipated Closing Date (or on such other date to which the Closing shall be extended as provided in this Agreement) and subject to the terms, covenants and conditions of this Agreement, the Closing shall occur, and Developer shall cause the New City Property (as defined below) to be conveyed to City and the City shall convey the 530 Sansome Property (as defined below) to the Developer.

6.2 **Exchange Property**

(a) New City Property. The "**New City Property**" shall collectively mean the following:

(i) the real property consisting of the 447 Battery Property, with all improvements and fixtures on the 447 Battery Property (the "**Existing 447 Battery Improvements**");

(ii) the 447 Battery Owner's interest in any contracts that Developer and the City agree should be assigned by the 447 Battery Owner and assumed by the City at the Closing, if any;

(iii) any and all rights, privileges, and easements incidental or appurtenant to the 447 Battery Property or Existing 447 Battery Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the 447 Battery Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the 447 Battery Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the 447 Battery Property or Existing 447 Battery Improvements, and any and all of the 447 Battery Owner's right, title and interest in and to all roads and alleys adjoining or servicing the 447 Battery Property (collectively, the "**447 Battery Appurtenances**"); and

(iv) any intangible personal property owned by the 447 Battery Owner immediately prior to the Closing and used in the ownership, use or operation of the 447 Battery Property, Existing 447 Battery Improvements or 447 Battery Personal Property, to the extent assignable to the Developer (collectively, the "**447 Battery Existing Intangible Property**").

(b) The "**530 Sansome Property**" shall collectively mean the following:

(i) the real property consisting of the Existing City Property, as improved by the Existing Fire Station, and any other improvements and fixtures on the Existing City Property (the "**Existing 530 Sansome Improvements**");

(ii) the City's interest in any contracts that Developer and the City agree should be assigned by City and assumed by Developer at the Closing, if any;

(iii) any and all rights, privileges, and easements incidental or appurtenant to the Existing City Property or Existing 530 Sansome Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Existing City Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Existing City Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Existing City Property or Existing 530 Sansome Improvements, and any and all of the City's

right, title and interest as fee owner of the Existing City Property in and to all roads and alleys adjoining or servicing the Existing City Property (collectively, the "**530 Sansome Appurtenances**");

(iv) all personal property owned by City located on or in or used in connection with the Existing City Property or Existing 530 Sansome Improvements as of the Closing Date, to the extent not removed by City prior to the Closing Date and transferable to the Developer (the "**530 Sansome Personal Property**"); and

(v) any intangible personal property owned by City as fee owner of the Existing City Property immediately prior to the Closing and used in the ownership, use or operation of the Existing City Property, Existing 530 Sansome Improvements or 530 Sansome Personal Property, to the extent assignable to the Developer (collectively, the "**530 Sansome Intangible Property**").

## 7. TITLE TO THE PROPERTIES

### 7.1 Conveyance of Title

(a) At the Closing, the City shall convey to the Developer, or its nominee (subject to such nominee's complying with the provisions of Section 15.3), fee simple title to the Existing City Property, the Existing 530 Sansome Improvements, and 530 Sansome Appurtenances, by duly executed and acknowledged quitclaim deed in the form attached hereto as Exhibit F-1 (the "**Existing City Property Deed**"), subject to the Accepted Developer Conditions of Title.

(b) At the Closing, Developer shall cause the 447 Battery Owner to convey to the City, or its nominee (subject to such nominee's complying with the provisions of Section 15.3), fee simple title to the 447 Battery Property, the Existing 447 Battery Improvements, and 447 Battery Appurtenances by duly executed and acknowledged quitclaim deed in the form attached hereto as Exhibit F-2 (the "**447 Battery Property Deed**"), subject to the Accepted City Conditions of Title.

(c) If the Title Company is not able to issue the Developer Title Policy or the City Title Policy because the Existing City Property Deed or the 447 Battery Property Deed is on the form of a quitclaim deed, the Existing City Property Deed and the 447 Battery Property Deed will be changed to be a customary grant deed.

### 7.2 Title Insurance.

(a) Delivery of title in accordance with Section 7.1(a) shall be evidenced by the commitment of Commonwealth Land Title Insurance Company ("**Title Company**") to issue to Developer, or its nominee, an ALTA extended coverage owner's policy of title insurance (2021 Form) (the "**Developer Title Policy**") in an amount to be mutually agreed upon by the Developer and the City on or before Closing Date, insuring fee simple title to the Existing City Property, Existing 530 Sansome Improvements, and 530 Sansome Appurtenances in the Developer, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants, and all other exceptions, liens and encumbrances, except for (i) a lien not yet due and payable for property taxes for the fiscal year in which the Closing occurs, (ii) the exceptions listed in Exhibit G, and (iii) any other exceptions approved in writing by Developer before the Closing or caused by the acts of Developer or its Agents (the "**Accepted Developer Conditions of Title**"). The Developer Title Policy shall provide full coverage against mechanics' and materialmen's liens and shall contain an affirmative endorsement that there are no violations of restrictive covenants affecting the Existing City Property and such special endorsements as the Developer may reasonably request.

(b) Delivery of title in accordance with Section 7.1(b) shall be evidenced by the commitment of the Title Company to issue to City, or its nominee, an ALTA extended coverage owner's policy of title insurance (2021 Form) (the “**City Title Policy**”) in an amount to be mutually agreed upon by the Developer and the City on or before Closing Date, insuring fee simple title to the 447 Battery Property, Existing 447 Battery Improvements, and 447 Battery Appurtenances in the City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants, and all other exceptions, liens and encumbrances, except for (i) a lien not yet due and payable for property taxes for the fiscal year in which the Closing occurs, (ii) the exceptions listed in Exhibit H, and (iii) any other exceptions approved in writing by City before the Closing or caused by the acts of City or its Agents (the “**Accepted City Conditions of Title**”). The City Title Policy shall provide full coverage against mechanics' and materialmen's liens and shall contain an affirmative endorsement that there are no violations of restrictive covenants affecting the 447 Battery Property and such special endorsements as the City may reasonably request.

7.3 **Bill of Sale.** At the Closing, City shall transfer title to the 530 Sansome Personal Property to Developer by bill of sale in the form mutually approved by the parties (the “**Existing City Property Bill of Sale**”), such title to be free of any liens, encumbrances or interests. At the Closing, Developer shall cause the 447 Battery Owner to convey to Developer the 447 Battery Personal Property by a bill of sale in substantially the form attached to the 447 Battery Purchase Agreement as Exhibit F (the “**447 Battery Bill of Sale**”).

#### 7.4 **Assignment of Contracts and Intangibles.**

(a) At the Closing, City shall transfer title to the 530 Sansome Intangible Property to Developer by an assignment in the form mutually approved by the parties (the “**City Assignment of Intangible Property**”) and Developer shall cause title to the 447 Battery Intangible Property to be transferred to the City by an assignment in the form mutually approved by the parties (the “**Assignment of 447 Battery Intangible Property**”).

(b) During the term of this Agreement, Developer shall use commercially reasonable efforts to monitor and enforce all of Developer's rights under the Project Contracts, and shall notify the City as soon as it learns of any material default or material work defect or deficiency.

(c) This Section shall survive the expiration or earlier termination of this Agreement.

### 8. **DUE DILIGENCE INVESTIGATIONS; RELEASE**

#### 8.1 **Due Diligence Materials and Representations**

(a) Developer's Affiliate entered the 447 Battery Purchase Agreement on May 7, 2024, and in connection therewith, Developer has performed standard due diligence regarding the physical, environmental, and title condition of the 447 Battery Property and obtained or procured various environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; site plans; and inspection reports by engineers or other licensed professionals (collectively, the “**Developer Documents**”). Developer represents and warrants that it has determined the physical, environmental and title condition of the 447 Battery Property is suitable for the construction of the Fire Station Project as required in this Agreement and the Construction Management Agreement for its intended use for the New Fire Station, and to the Developer's actual knowledge, the 447 Battery Property does not have any physical, environmental or title condition that will increase City's customary costs to operate a fire station. Developer further represents and warrants that, to Developer's actual knowledge (as defined in Section 12.2), all of the material Developer Documents in Developer's possession are listed in Exhibit I, and, to Developer's actual knowledge, Developer has delivered to City true and complete copies of the

Developer Documents listed in Exhibit I prior to the Effective Date. City agrees that it has had the opportunity to review all Developer Documents delivered as of the Effective Date; provided, however, that Developer acknowledges and agrees that City is relying on Developer's review of the Developer Documents and due diligence inspections. At the Closing, Developer shall assign, and cause Developer's Affiliate to assign (in each case to the extent assignable) to the City all of Developer and Developer's Affiliate's rights, warranties, guaranties, and interests in the Developer Documents to the extent they relate to the 447 Battery Property or the Fire Station Project.

(b) Developer acknowledges that it has received preliminary reports for the Existing City Property by Ticor Title Company of California for Order No. 00580887-988, the most recent of which was dated June 12, 2020, and amended June 24, 2020, and a preliminary report dated April 9, 2025, and amended April 21, 2025 (the "**City Documents**"). City represents and warrants that, to City's actual knowledge, the City Documents and the documents listed as Item Nos. 3 and 4 in Exhibit J are the only material documents in possession of the Director of Property with respect to the condition of the Existing City Property, and the documents listed as Item No. 3 in Exhibit J are true and complete copies.

## **8.2 Prior Diligence**

(a) Developer acknowledges and agrees that City is relying on Developer's investigation of the physical, environmental and title condition of the 447 Battery Property and Developer's determination that the 447 Battery Property is suitable for the construction of the Fire Station Project and its intended use for the New Fire Station. Developer agrees to keep the City informed of any and all matters of significance with respect to the 447 Battery Property between the Effective Date and the Closing Date. Developer further agrees to provide such additional information relating to the 447 Battery Property that is specifically and reasonably requested by the City from time to time, to the extent Developer or Developer's Affiliate actually possesses or has knowledge of such information. Developer hereby agrees to indemnify and hold City harmless from any claims or losses arising from any party claiming relocation or other benefits with respect to any leases described in the 447 Battery Purchase Agreement ("**Leases**") or any other agreement for the use or occupancy of the 447 Battery Property, except to the extent such claims or losses arise from any City communications informing that party that City will provide such relocation or other benefits.

(b) Developer agrees that it has had a full opportunity to investigate the Existing City Property, either independently or through agents of the Developer's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Existing City Property as Developer deemed fit, as well as the suitability of the Existing City Property for the Tower.

(c) Developer has approved the conditions of the Existing City Property existing as of the Effective Date. City agrees to keep Developer informed of any and all matters of significance with respect to the Existing City Property during the period between the Effective Date and Closing Date. City further agrees to provide such additional information relating to the Existing City Property that is specifically and reasonably requested by Developer from time to time, to the extent the City actually possesses or has knowledge of such information.

(d) Developer hereby agrees to indemnify and hold City harmless from any damage or injury to persons or property caused by the actions or inactions of Developer or its Agents during its due diligence entries onto the Existing City Property or by the actions or inactions of Developer, Developer's Affiliate, or their respective Agents during their due diligence entries onto the 447 Battery Property, except to the extent such damage or injury is caused by the acts or omissions of City or any of its Agents. The foregoing indemnity for damage to the Existing City Property shall

not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions except to the extent the Developer aggravates any pre-existing environmental conditions on, in, under or about the Existing City Property. The provisions of this Section shall survive Closing and any termination of this Agreement for the applicable statute of limitations.

**8.3 City Release.** By providing Developer with written confirmation of Final Completion under the Construction Management Agreement, the City shall be deemed to have made its own independent investigation of the 447 Battery Property, the Developer Documents and the presence of any Hazardous Materials in or on the 447 Battery Property as City deems appropriate. Accordingly, subject to the representations and warranties of Developer expressly set forth in Section 12.2, the City, on behalf of itself and all of its officers, directors, shareholders, employees, representatives and affiliated entities (collectively, the “**City Releasers**”) hereby, effective concurrently with delivery of such written confirmation, expressly waives and relinquishes any and all rights and remedies the City Releasers may now or hereafter have against Developer, its affiliates (including Developer’s Affiliate), their investors and lenders for the Project, each of their respective successors and assigns, and each of their respective partners, shareholders, officers and/or directors (the “**Developer Parties**”), whether known or unknown, which may arise from or be related to (a) the Developer Documents, (b) the physical condition, quality, quantity and state of repair of the 447 Battery Property and the prior operation of the same, (c) the 447 Battery Property’s compliance or lack of compliance with any federal, state or local laws or regulations, and (d) any past or present existence of Hazardous Materials in or on the 447 Battery Property or with respect to any past or present violation of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage or disposal of Hazardous Materials in or around the 447 Battery Property, including, without limitation, (i) any and all rights and remedies the City Releasers may now or hereafter have under the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act, all as amended, and any similar state, local or federal environmental law, rule or regulation, and (ii) any and all claims, whether known or unknown, now or hereafter existing, with respect to the 447 Battery Property under Section 107 of CERCLA (42 U.S.C.A. Section 9607). To the extent agreed to by the Director of Property (in consultation with the San Francisco Fire Department, the San Francisco Department of Public Works, and the City Attorney’s Office) and the Developer, the parties may elect to modify the Construction Management Agreement to include releases with the City’s written confirmation of Final Completion under the Construction Management Agreement regarding (i) the physical condition, quality, quantity and state of repair of the New Fire Station and (ii) the New Fire Station’s compliance or lack of compliance with any federal, state or local laws or regulations, and otherwise generally consistent with the scope of the release in this Section 8.3.

**8.4 Developer Release.** By proceeding with the Closing, Developer shall be deemed to have made its own independent investigation of the Existing City Property and the presence of any Hazardous Materials in or on the Existing City Property as Developer deems appropriate and all matters related to the Approvals and Additional Approvals. Accordingly, subject to the representations and warranties of City expressly set forth in Section 12.3, Developer, on behalf of itself and all of its officers, directors, shareholders, employees, representatives and affiliated entities (collectively, the “**Developer Releasers**”), effective concurrently with the Closing, expressly waives and relinquishes any and all rights and remedies the Developer Releasers may now or hereafter have against the City, its successors and assigns, officers, members, commissioners and/or employees (the “**City Parties**”), whether known or unknown, which may arise from or be related to (a) the acts or omissions prior to the Closing Date by City in its proprietary capacity with respect to Approvals and Additional Approvals, (b) the physical condition, quality, quantity and state of repair of the Existing City Property and the prior management and operation of the Existing City Property, (c) the Existing City Property’s compliance or lack of compliance with any federal, state or local laws or regulations (including,

without limitation, the failure of City to comply with any energy disclosure requirements), and (d) any past or present existence of Hazardous Materials in or on the Existing City Property or with respect to any past or present violation of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage or disposal of Hazardous Materials in or around the Existing City Property, including, without limitation, (i) any and all rights and remedies the Developer Releasers may now or hereafter have under the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act, all as amended, and any similar state, local or federal environmental law, rule or regulation, and (ii) any and all claims, whether known or unknown, now or hereafter existing, with respect to the Existing City Property under Section 107 of CERCLA (42 U.S.C.A. §9607).

**8.5 General Release Under Section 1542.** WITH RESPECT TO THE RELEASES IN SECTION 8.3 AND SECTION 8.4, CITY, ON BEHALF OF ITSELF AND THE OTHER CITY RELEASERS, AND DEVELOPER, ON BEHALF OF ITSELF AND THE OTHER DEVELOPER RELEASERS, EACH ACKNOWLEDGE THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH IS SET FORTH BELOW:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

BY INITIALING BELOW, THE CITY, ON BEHALF OF ITSELF AND THE OTHER CITY RELEASERS, AND DEVELOPER, ON BEHALF OF ITSELF AND THE OTHER DEVELOPER RELEASERS, WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS THAT ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

City's Initials: \_\_\_\_\_ Developer's Initials: \_\_\_\_\_

THE FOREGOING WAIVERS, RELEASES AND AGREEMENTS SHALL SURVIVE THE CLOSING AND RECORDATION OF THE EXISTING CITY PROPERTY DEED AND THE 447 BATTERY PROPERTY DEED (WITHOUT LIMITATION) AND SHALL NOT BE DEEMED MERGED INTO EXISTING CITY PROPERTY DEED OR 447 BATTERY PROPERTY DEED UPON THEIR RECORDATION. THE FOREGOING RELEASES SHALL NOT APPLY TO ANY RIGHTS THE PARTIES MAY HAVE (1) UNDER THIS AGREEMENT TO THE EXTENT SUCH RIGHTS EXPRESSLY SURVIVE THE CLOSING, AGAINST GENERAL CONTRACTOR OR ARCHITECT UNDER THE TERMS OF THE FINAL CONSTRUCTION CONTRACT OR THE ARCHITECT CONTRACT, OR AGAINST ANY OTHER PROJECT CONTRACTOR UNDER THE APPLICABLE PROJECT CONTRACT.

## **9. CLOSING CONDITIONS**

**9.1 City's Conditions to Closing.** The following are conditions precedent to the City's obligation to consummate the Closing, as provided under this Agreement (the “**City's Conditions Precedent**”):

(a) All Additional Approvals necessary to commence construction of the New Fire Station have been granted and are final, binding, and non-appealable and Developer shall have

provided City with commercially-reasonable documentation that Developer's loan for the construction of the Project has closed or will close concurrently with Closing.

(b) The parties shall have approved the Final Construction Contract, and a resolution or ordinance approving the Final Construction Contract by the City's Board of Supervisors shall be effective if such approval is required under Section 2.2.

(c) Commonwealth Land Title Insurance Company shall be irrevocably committed to issue the City Title Policy as of the Closing Date to City or its nominee, and there shall be no liens encumbering the 447 Battery Property other than the Accepted City Conditions of Title.

(d) The 447 Battery Purchase Agreement shall be in full force and effect, and all conditions precedent to the obligations of Developer's Affiliate to purchase the 447 Battery Property and for the 447 Battery Owner to sell the 447 Battery Property under Articles 4 and 5 of the 447 Battery Purchase Agreement shall have been fully satisfied, and City shall have received a photocopy of all consents and approvals required by 447 Battery Owner under Section 4.7 of the 447 Battery Purchase Agreement;

(e) City shall have received commercially reasonable evidence that the Leases have expired and there are no parties with rights to occupy or use the 447 Battery Property, and the Developer's Affiliate and the 447 Battery Owner shall have performed their obligations under Article 6 and Section 8.5 of the 447 Battery Purchase Agreement.

(f) There shall be no event of default or any matter that, with the passage of time or notice, will be an event of default by Developer's Affiliate or the 447 Battery Owner under the 447 Battery Purchase Agreement.

(g) Developer's delivery of an ALTA survey of the 447 Battery Property prepared by a licensed surveyor (the "**Survey**"). The Survey shall be reasonably acceptable to, and certified to, the City and Title Company and in sufficient detail for Title Company to provide the City Title Policy without any boundary, encroachment or survey exceptions that would have a Material Adverse Effect.

(h) Without the City's approval (not to be unreasonably withheld), and except as otherwise expressly permitted under this Agreement, there shall be no contracts, liens, occupancy rights, or any other 447 Battery Property obligations that will be binding upon City after Closing other than the Project Contracts and the Accepted City Conditions of Title.

(i) Developer shall have deposited the original duly executed Completion Guaranty to City in Escrow.

(j) The parties shall have mutually agreed to the amount of the Developer Title Policy and City Title Policy.

(k) There shall be no change in the physical and environmental condition of the 447 Battery Property since the Effective Date that would have a Material Adverse Effect.

(l) No Developer Event of Default shall exist (and no notice of default shall have been given by the City that remains uncured) and all of Developer's representations and warranties contained in or made pursuant to this Agreement shall be true and correct in all material respects or, if such is not the case, such failure does not have a Material Adverse Effect. At the Closing, Developer shall deliver to the City a certificate in the form attached as Exhibit K certifying whether each of Developer's representations and warranties contained in this Agreement continue to be true and correct as of the Closing Date.

(m) Developer shall have delivered all documents and monies to Escrow required for the Closing, including delivery of the closing documents required to be delivered in accordance with this Agreement by Developer.

(n) There shall be no litigation or administrative agency or other governmental proceeding that has been filed or credibly threatened against Developer, the Existing City Property, the 447 Battery Property or this Agreement and could have a Material Adverse Effect after the Closing.

(o) There shall be no event of default by Developer under the Construction Management Agreement or the Development Agreement.

The City's Conditions Precedent contained in this Section 9 are solely for the benefit of City. If any City's Condition Precedent is not satisfied, the City shall have the right in its sole discretion to waive in writing the City's Condition Precedent in question and proceed with the Closing. The waiver of any City's Condition Precedent shall not relieve Developer of any liability or obligation with respect to any covenant or agreement of Developer, except that, if the Closing occurs, any breached representation or warranty for the Closing of which City has knowledge as of the Closing shall not survive the Closing.

If the sale of the 447 Battery Property is not consummated because of a Developer Event of Default or if a City's Condition Precedent cannot be fulfilled because Developer or Developer's Affiliate frustrated such fulfillment by some bad faith act or bad faith omission, the City may exercise all rights and remedies available, following applicable notice and cure periods, as set forth in, and subject to the provisions of, Section 10.6.

**9.2 Developer's Conditions to Closing.** The following are conditions precedent to the Developer's obligation to consummate the Closing, as provided under this Agreement (the "**Developer's Conditions Precedent**", and together with the City's Conditions Precedent, the "**Conditions Precedent**"):

(a) All Additional Approvals necessary to commence construction of the New Fire Station have been granted and are final, binding, and non-appealable.

(b) All Later Approvals (as defined in the Development Agreement) necessary to commence construction of the Tower in accordance with the Development Agreement shall have been granted and are final, binding, and non-appealable.

(c) There shall be no change in the physical and environmental condition of the Existing City Property since the Effective Date that would have a Material Adverse Effect.

(d) The parties' agreement as to the amount of the Developer Title Policy and City Title Policy.

(e) The Title Company's commitment to issue to Developer or its permitted nominee the Developer Title Policy as of the Closing Date.

(f) The parties' approval of the Final Construction Contract.

(g) No City Event of Default shall exist (and no notice of default shall have been given by Developer that remains uncured) and all of the City's representations and warranties contained in or made pursuant to this Agreement shall be true and correct in all material respects or, if such is not the case, such failure does not have a Material Adverse Effect. At the Closing, the City shall



deliver to Developer a certificate in the form attached as Exhibit L certifying whether each of the City's representations and warranties contained in this Agreement continue to be true and correct as of the Closing Date.

(h) The City shall have delivered all documents to Escrow required for the Closing, including delivery of the closing documents required to be delivered in accordance with this Agreement by the City.

(i) There shall be no litigation or administrative agency or other governmental proceeding that has been filed against the City, the 447 Battery Property, the Existing City Property or this Agreement which after the Closing could have a Material Adverse Effect.

(j) The 447 Battery Purchase Agreement shall be in full force and effect, and all conditions precedent to the obligations of Developer's Affiliate to purchase the 447 Battery Property and for the 447 Battery Owner to sell the 447 Battery Property under Articles 4 and 5 of the 447 Battery Purchase Agreement shall have been fully satisfied, and Developer's Affiliate shall have received a photocopy of all consents and approvals required by 447 Battery Owner under Section 4.7 of the 447 Battery Purchase Agreement;

(k) All the Leases shall have expired and there are no parties with rights to occupy or use the 447 Battery Property, and the Developer's Affiliate and the 447 Battery Owner shall have performed their obligations under Article 6 and Section 8.5 of the 447 Battery Purchase Agreement.

(l) There shall be no event of default or any matter that, with the passage of time or notice, will be an event of default by Developer's Affiliate or the 447 Battery Owner under the 447 Battery Purchase Agreement.

(m) The Developer shall have received all regulatory approvals required from City to - merge the Existing City Property and Existing Developer Property and create condominium parcels on the merged property as of the Closing Date.

(n) There shall be no event of default by City under the Construction Management Agreement or the Development Agreement.

The Developer's Conditions Precedent contained in this Section 9.2 are solely for the benefit of Developer. If any Developer's Conditions Precedent is not satisfied, the Developer shall have the right in its sole discretion to waive in writing the Developer's Conditions Precedent in question and proceed with the Closing, as applicable, as contemplated hereunder. The waiver of any Developer's Conditions Precedent shall not relieve City of any liability or obligation with respect to any covenant or agreement of City, except that, if the Closing occurs, any breached representation or warranty of which Developer has knowledge as of the Closing will be deemed waived and shall not survive the Closing.

If the transfer of the fee estate in the Existing City Property is not consummated because of a City Event of Default or if a Developer's Condition Precedent cannot be fulfilled because the City frustrated such fulfillment by some bad faith act or bad faith omission, Developer may exercise all rights and remedies available, following applicable notice and cure periods, as set forth in Section 10.6.

For purposes of this Agreement, "**Material Adverse Effect**" shall mean any item or occurrence that (i) for the City, has a material adverse effect on the value of the 447 Battery Property or a material adverse effect on the condition of, or City's operation of, the New Fire Station, unless Developer elects at its sole discretion (with no obligation to so elect) to fully

mitigate such adverse effect at its sole cost, or the item or occurrence would affect Developer's ability to timely complete the Fire Station Project, (ii) for the Developer, if the same will cause the Project Cost to exceed the Project Budget, unless the City elects (with no obligation to so elect) to pay for such excess amount, or the same has a material adverse effect on the value of the Existing City Property or the ability of the Developer to develop and/or own and operate the Tower, or (iii) for both parties, has a material adverse effect on that party's ability to perform its obligations under this Agreement.

9.3 **Cooperation.** Developer and City shall cooperate with each other and do all acts as may be reasonably requested, except (i) Developer shall not be required to pay for any City-Approved Change Order, except to the extent that City pays Developer for the City-Approved Change Order and Developer is obligated to remit such payment to a Project Contractor under the Construction Management Agreement, and (ii) neither party shall be required to incur any liability or potential liability as a result of such cooperation by the other or as reasonably needed or expected to fulfill the Conditions Precedent including, without limitation, execution of any documents, applications or permits. Developer's representations and warranties to the City shall not be affected or released (except as expressly provided above) by the City's waiver or fulfillment of any City's Condition Precedent and City's representations and warranties to Developer shall not be affected or released (except as expressly provided above) by the Developer's waiver or fulfillment of any Developer's Condition Precedent.

## 10. **ESCROW AND CLOSING**

10.1 **Opening of Escrow.** No less than forty-five (45) days prior to the date scheduled for Closing, the parties shall open escrow ("**Escrow**") by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the transactions contemplated hereby. Developer and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transactions contemplated under this Agreement, as well as the Close of Escrow under the 447 Battery Purchase Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

### 10.2 **Anticipated Closing Date**

(a) **Closing.** The transfer of the 530 Sansome Property to Developer and the New City Property to City as contemplated in this Agreement (the "**Closing**") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, at the offices of Title Company on a date (the "**Anticipated Closing Date**") that is between the Effective Date and May 7, 2028 (the "**Outside Closing Date**"). The Developer shall select the Anticipated Closing Date (as the same may be extended pursuant to this subsection with the mutual written consent of the parties or for Unavoidable Delay), provided that the Developer shall provide City with at least ninety (90) days' prior written notice of the Anticipated Closing Date (which notice shall include a copy of the duly issued Option Exercise Notice under the 447 Battery Purchase Agreement), or such other date as may be mutually agreed upon in writing by the parties in their sole discretion. Notwithstanding the foregoing, Developer shall have the right to extend the Anticipated Closing Date for a reasonable period of time to the extent that such Anticipated Closing Date is delayed due to an Unavoidable Delay. The actual date that the Closing occurs shall be hereinafter referred to as the "**Closing Date**".

The parties acknowledge that the term of the option under the 447 Battery Purchase Agreement is currently set to expire at 11:59 P.M. (Pacific Time) on May 7, 2028 and that under no circumstances shall the Closing Date occur after such date, unless the parties separately agree

in writing to have Developer seek an extension of the option term under the 447 Battery Purchase Agreement and Developer is successful in negotiating such extension (to the date mutually agreed by the parties) with the 447 Battery Owner. The cost of any such extension shall be at Developer's sole cost unless City has agreed to pay for such cost as a City-Approved Change Order under the Construction Management Agreement.

**10.3 Developer's Delivery of Documents and Funds.** At or before the Closing, Developer shall deliver through Escrow to the City, or its nominee, the following:

(i) four (4) duly executed original and counterpart of the Assignment of 447 Battery Intangible Property and the City Assignment of Intangible Property;

(ii) an original 447 Battery Property Deed, duly executed by the 447 Battery Owner and acknowledged;

(iii) **Intentionally deleted;**

(iv) cash in an amount no less than all applicable closing and escrow costs, which are all to be paid by Developer, and the Colliers Fee;

(v) originals or copies of the Developer Documents, and any other items relating to the 447 Battery Purchase Agreement or the ownership or operation of the 447 Battery Property not previously delivered to City;

(vi) a duly executed original of the Completion Guaranty;

(vii) the duly executed certificate in the form of Exhibit K attached hereto regarding the accuracy of the Developer's representations and warranties as required by Section 9.1(l) hereof;

(viii) a closing statement in form and content satisfactory to the City and Developer, executed by Developer;

(ix) such resolutions, authorizations, or other documents or agreements relating to Developer as City or the Title Company may reasonably require to demonstrate the authority of Developer to enter into this Agreement and consummate the transactions contemplated hereby (including, without limitation, such title affidavits and indemnities as Title Company may require to issue the Developer Title Policy, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Developer to act for and bind Developer);

(x) a duly executed original counterpart of the Construction Management Agreement; and

(xi) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code, in the form attached hereto as Exhibit M, and on which City is entitled to rely, that Developer is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code to the extent reasonably required by City.

**10.4 City's Delivery of Documents.** At or before the Closing, the City shall deliver to Developer through Escrow the following:

(i) an original, duly executed and acknowledged Existing City Property Deed;

- (ii) an original and duly executed counterpart of the Existing City Property Bill of Sale;
- (iii) an original and duly executed counterpart of the City Assignment of Intangible Property;
- (iv) an original acceptance of the 447 Battery Property Deed, executed by the Director of Property;
- (v) a duly executed original counterpart of the Assignment of Contracts under the 447 Battery Purchase Agreement, to the extent that City has elected to assume any existing contracts affecting the 447 Battery Property;
- (vi) the duly executed certificate in the form of Exhibit L attached hereto regarding the accuracy of the City's representations and warranties as required by Section 9.2(g) hereof;
- (vii) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code, in the form attached hereto as Exhibit M, and on which Developer is entitled to rely, that City is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code to the extent reasonably required by Developer;
- (viii) a closing statement in form and content satisfactory to the City and Developer, executed by City;
- (ix) such resolutions, authorizations, or other documents or agreements relating to City as Developer or the Title Company may reasonably require to demonstrate the authority of City to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of City to act for and bind City; and
- (x) a duly executed original counterpart of the Construction Management Agreement.

**10.5 Other Documents; Funds.** Developer and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the Escrow and consummate the transactions contemplated hereunder for the Closing in accordance with the terms hereof. For avoidance of doubt, Developer and City agree to cooperate with Title Company so as to facilitate the Closing under this Agreement and the close of escrow under the 447 Battery Purchase Agreement at the same time. All amounts payable under this Agreement, shall, except as may be otherwise provided in this Agreement, be paid in legal tender of the United States of America, in cash or by wire transfer of immediately available funds to Title Company, as escrow agent.

#### **10.6 Default and Remedies**

(a) Default. The City and Developer agree to use good faith efforts to amicably resolve any disputes that may arise concerning the performance by either party of their obligations under this Agreement. If the parties are not able to resolve any dispute (not including Arbitration Matters), either party can refer the matter to nonbinding mediation in accordance with Section 5.2. If the parties cannot resolve a dispute through such mediation, or if neither party initiates mediation within ten (10) days of notification of the dispute, then the party alleging a breach or default by the other shall send to the other party a notice of default. Any notice of default given by a party shall specify the nature of the alleged default and, where appropriate, the manner in which the

default may be satisfactorily cured (if at all). The following shall constitute a default or breach of this Agreement (subject to expiration of all notice and cure periods as set forth below and subject to the limitations set forth below):

(i) the failure to make any payment (between the parties only) within sixty (60) days following written notice that such payment was not made when due and demand for compliance;

(ii) the appointment of a receiver to take possession of all or substantially all of the assets of a party (but not a receiver appointed at the request of the other party), or an assignment for the benefit of creditors, or any action taken or suffered by a party under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days;

(iii) a failure to abide by the judgment or decision of the arbitrator following any arbitration under Section 5.1, and such failure continues for thirty (30) days following written notice, plus any additional time necessary to appeal any arbitration decision to the extent permitted in Section 5.1(e) herein;

(iv) a breach of a material representation or warranty under this Agreement, which breach is not or cannot be corrected by the breaching party within sixty (60) days following notice;

(v) a transfer or attempted transfer or assignment of a party's rights or obligations under this Agreement without the prior consent of the other party (except as expressly permitted under this Agreement, such as any transfer to a Lender permitted under Section 15.12(b)), and the failure to cancel or reverse the transfer or assignment within sixty (60) days following written notice and demand for compliance; and

(vi) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement or the Construction Management Agreement, and the continuation of such failure for a period of sixty (60) days following written notice and demand for compliance, or if such obligation cannot reasonably be cured within sixty (60) days, then the party fails to initiate the cure within thirty (30) days and diligently prosecutes the same to completion within such time as is reasonably required.

Notwithstanding anything to the contrary above, the items listed in clauses (ii) and (iii) above shall not be subject to mediation under Section 5.2 and there will be no cure periods beyond the time periods listed above. For purposes of this Agreement, (1) "**City Event of Default**" shall mean the occurrence of any of the events in Sections 10.6(a) by City; and (2) "**Developer Event of Default**" shall mean the occurrence of any of the events in Section 10.6(a) by Developer; provided, however, notwithstanding the foregoing, neither City nor Developer shall be in default of this Agreement unless the notice and cure period set forth above in this Section 10.6(a) shall have expired (regardless whether the default or breach is curable).

(b) Remedies.

(i) City Remedies Upon Developer Event of Default. Upon the occurrence of a Developer Event of Default, the City shall have as its sole and exclusive remedy the right to elect one of the following:

(A) to terminate this Agreement, and bring an action against Developer for actual damages, expressly excluding special, indirect, consequential, remote, incidental or punitive damages or damages for lost profits or opportunities; provided, however, under no

circumstances shall Developer's liability for any damages incurred by the City in connection with one or more Developer Events of Default exceed, in the aggregate, the sum of \$10,000,000 (and, for the breach of a representation or warranty, shall not exceed \$1,000,000 as set forth in Section 15.5), or

(B) to bring a suit for specific performance provided that any suit for specific performance must be brought within sixty (60) days following the occurrence of the Developer Event of Default.

(ii) Developer Remedies Upon City Event of Default. Upon the occurrence of a City Event of Default, Developer shall have as its sole and exclusive remedy the right to elect one of the following:

(A) to terminate this Agreement, and bring an action against the City for actual damages expressly excluding special, indirect, remote, incidental or punitive damages or damages for lost profits or opportunities; provided, however, under no circumstances shall City's liability for any damages incurred by the Developer in connection with one or more City Events of Default exceed, in the aggregate, the sum of \$10,000,000 (and, for the breach of a representation or warranty, shall not exceed \$1,000,000 as set forth in Section 15.5), or

(B) to bring a suit for specific performance provided that any suit for specific performance must be brought within sixty (60) days following the occurrence of the City Event of Default.

(c) No Personal Liability. Notwithstanding anything to the contrary in this Agreement, (i) no individual board member, director, commissioner, officer, employee, official or agent of the City, direct or indirect, shall be personally liable to Developer or its successors and assigns in the event of any City Event of Default, or for any amount which may become due to Developer or its successors and assigns under this Agreement, and (ii) no individual board member, director, officer, employee, official, partner, member, employee or agent of Developer, direct or indirect, shall be personally liable to the City in the event of any Developer Event of Default or for any amount which may become due to the City under this Agreement.

**10.7 Title Company as Real Estate Reporting Person.** Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "**Reporting Requirements**") require that certain information be made available to the United States Internal Revenue Service, and a statement to be furnished to City, in connection with the Closing. Developer and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transactions contemplated in this Agreement and is hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Developer and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

## **11. EXPENSES AND TAXES**

**11.1 Apportionments.** The following are to be apportioned through Escrow as of the Closing Date:

(a) Utility Charges for Existing City Property. On the Closing Date, the City shall cause all the utility meters for the Existing City Property to be read on the Closing Date, and City will be responsible for the cost of all utilities used at the Existing City Property before the Closing Date and Developer will be responsible for such cost on and after the Closing Date. On the Closing

Date, Developer shall ensure that Developer's Affiliate causes all the utility meters for the 447 Battery Property to be read on the Closing Date, and to cause the 447 Battery Owner or Developer's Affiliate to be responsible for the cost of all utilities used at the 447 Battery Property before the Closing Date and City will be responsible for such cost on and after the Closing Date.

(b) Other Apportionments for Existing City Property and 447 Battery Property. On the Closing Date, amounts payable under any contracts approved by Developer and liability for other normal property operation and maintenance expenses and other recurring costs for the Existing City Property shall be apportioned as of the Closing Date. On the Closing Date, City shall pay all amounts due with respect to the Existing City Property for the period prior to the Closing Date and Developer shall be responsible for such amounts and liability on and after the Closing Date to the extent the same are disclosed to Developer prior to the Effective Date. Between the Closing Date and TCO, except for any property taxes, Developer shall be responsible for any 447 Battery Property operation and maintenance expenses and other recurring costs.

**11.2 Closing Costs.** On the Closing Date, Developer shall pay the cost of the premium for the Developer Title Policy, the City Title Policy, and the cost of the endorsements thereto, and escrow and recording fees, any transfer taxes applicable to the transfers contemplated under this Agreement, any sales tax on the 530 Sansome Personal Property, and any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be paid by the Developer. Developer shall pay, or cause Developer's Affiliate to pay, all escrow and recording fees, any sales tax on the 447 Battery Personal Property, and any other costs and charges of the escrow for the 447 Battery Property sale not otherwise provided for in this Section or elsewhere in this Agreement.

### **11.3 Real Estate Taxes and Special Assessments**

(a) After the Closing, Developer shall pay the full amount of any special assessments against the Existing City Property, including, without limitation, interest payable thereon, applicable to the period on or after the Closing Date.

(b) Developer acknowledges that, as a Charter county and city, real estate taxes will not be assessed against the City with respect to the Existing City Property prior to the Closing. General real estate taxes for the Existing City Property and payable for the portion of the tax year that occurs after the Closing shall be prorated through Escrow and paid by Developer as of the Closing Date.

(c) Developer acknowledges that, as a Charter county and city, real estate taxes will not be assessed against the City with respect to the 447 Battery Property after the Closing. Developer shall cause Developer's Affiliate to enforce the 447 Battery Owner's obligation to pay the 447 Battery Property general real estate taxes and special assessments payable for the tax year in which the Closing occurs, and Developer shall cause the 447 Battery Property real estate taxes payable for the portion of the tax year that occurs after the Closing to be paid prior to Closing, with the right to seek reimbursement for such post-Closing portion from the City's Tax Assessor due to City's ownership of the 447 Battery Property during such period. The City agrees to cooperate with the Developer's efforts to seek such reimbursement from the City's Tax Assessor by providing all information required by the City's Tax Assessor regarding City's ownership of the 447 Battery Property as of the Closing Date.

**11.4 Post-Closing Reconciliation.** If any of the foregoing prorations cannot be calculated accurately on the Closing Date as to the Existing City Property, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party.

11.5 **Survival.** The provisions of this Article 11 shall survive the Closing.

12. **REPRESENTATIONS AND WARRANTIES; RELEASE**

12.1 **City's Acknowledgement of 447 Battery Owner's Representations and Warranties.** The City agrees that it has reviewed the representations and warranties of the 447 Battery Owner under Section 10.2 of the 447 Battery Purchase Agreement. Developer agrees to indemnify City for any losses caused by any of those representations or warranties being untrue or incomplete.

12.2 **Representations and Warranties of Developer.** Except as set forth in Exhibit N ("**Developer's General Disclosures**"), Developer represents and warrants to the City as follows as of the Effective Date:

(a) To Developer's actual knowledge, the Developer Documents furnished to the City are all of the relevant documents and information pertaining to the condition and operation of the 447 Battery Property in the actual possession of Developer, Developer's Affiliate, and their respective Agents.

(b) The 447 Battery Purchase Agreement was duly and validly executed and delivered by Developer and remains in full force and effect. Developer's Affiliate had full power and authority to enter into the 447 Battery Purchase Agreement and has the full power and authority to comply with its terms.

(c) Developer's Affiliate is not in default under the 447 Battery Purchase Agreement nor has any event, act or omission occurred that, with the giving of notice and passage of time, would become an event of default by Developer's Affiliate. To Developer's actual knowledge, the 447 Battery Owner is not in default under the 447 Battery Purchase Agreement nor has any event, act or omission occurred that, with the giving of notice and passage of time, would become an event of default by the 447 Battery Owner.

(d) Developer's Affiliate is not in breach of any representations or warranties in Section 10.1 of the 447 Battery Purchase Agreement, and to Developer's actual knowledge, the 447 Battery Owner is not in breach of any representations or warranties in Section 10.2 of the 447 Battery Purchase Agreement.

(e) To Developer's actual knowledge, except as disclosed to City, no document or instrument furnished by the Developer to the City pursuant to this Agreement contains any untrue statement of material fact or is materially misleading.

(f) To Developer's actual knowledge, the 447 Battery Owner has not received written notification from any governmental agency of any condemnation, either instituted or planned to be instituted, by any governmental or quasi-governmental agency other than the City, which could detrimentally affect the use, operation or value of the 447 Battery Property.

(g) To Developer's actual knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or for the normal use and operation of the 447 Battery Property are installed to the property lines of the 447 Battery Property and are adequate to service the 447 Battery Property.

(h) To Developer's actual knowledge, except for the exceptions listed in Exhibit G, there are no easements or rights of way burdening the 447 Battery Property which are not of record with respect to the 447 Battery Property and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any



portion of the 447 Battery Property to gain access to other real property. To Developer's actual knowledge, there are no disputes with regard to the location of any fence or other monument of the 447 Battery Property boundary nor any claims or actions involving the location of any fence or boundary.

(i) Neither Developer nor Developer's Affiliate have received, and to Developer's actual knowledge, the 447 Battery Owner has not received, service of process with respect to any litigation that might detrimentally affect the use or operation of the 447 Battery Property for its intended purpose or the value of the 447 Battery Property or the ability of Developer to perform its obligations under this Agreement.

(j) Developer has inspected the physical, environmental and title condition of the 447 Battery Property, including review of the Developer Documents, and has determined the 447 Battery Property is suitable for the construction of the Fire Station Project and its intended use for the New Fire Station, with no physical, environmental and title condition of the 447 Battery Property that would increase City's costs to operate the New Fire Station. To Developer's actual knowledge, (i) there are no material physical or mechanical defects of the 447 Battery Property, and (ii) there are no violations of any laws, rules or regulations applicable to the 447 Battery Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(k) Except for the 447 Battery Purchase Agreement, all contracts affecting the 447 Battery Property, the Leases, and any other agreements that give any party the right to use, occupy or acquire the 447 Battery Property have terminated.

(l) Developer is a limited liability company duly organized and validly existing under the laws of Delaware and in good standing under the laws of the State of California; this Agreement and all documents executed by Developer which are to be delivered to the City at the Closing are, or will be, duly authorized, executed and delivered by Developer, are, or at the Closing will be, legal, valid and binding obligations of Developer, enforceable against Developer in accordance with their respective terms, and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Developer is a party or to which Developer is subject.

(m) Developer represents and warrants to the City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Developer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by the City.

(n) To Developer's actual knowledge, (i) except as described in the Developer Documents ("**Developer's Environmental Disclosures**"), the 447 Battery Property is not in violation of any Environmental Laws; (ii) the Existing Developer Property is not now, nor has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except as described in the Developer Documents or in Developer's Environmental Disclosures and except for the use of such substances in such limited amounts as are customarily used in the construction or operation of office buildings and which are used in compliance with Environmental Laws; (iii) except as disclosed in the Developer Documents, there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the 447 Battery Property in violation of Environmental Laws; (iv) except as disclosed in the Developer Documents, there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the 447 Battery Property; (v) except as disclosed in the Developer Documents, the 447 Battery Property does not consist of any landfill or of any building

materials that contain Hazardous Material in violation of Environmental Laws; and (vi) except as disclosed in the Developer Documents, the 447 Battery Property is not subject to any claim by any Regulatory Agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the 447 Battery Property, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

(A) "Environmental Laws" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Existing Developer Property, including, without limitation, soil, air and groundwater conditions.

(B) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed, currently or in the future, by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the improvements or are naturally occurring substances on or about the Existing Developer Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

(C) "Release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Existing Developer Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(o) To Developer's actual knowledge, there are no contracts encumbering the Existing Developer Property that will be binding on the City after the Closing except for the Accepted Conditions of Title and any contracts approved by the City in writing (which approval shall not be unreasonably withheld).

(p) Developer is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

For purposes hereof, the phrase "to Developer's actual knowledge" shall mean the actual knowledge of Matthew Witte and includes information obtained by Matthew Witte. Developer represents that this is the person within Developer's organization that has the most knowledge of the 447 Battery Purchase Agreement, and is therefore in the best position to give these representations.

**12.3 Representations and Warranties of City.** Except as set forth in the City Documents and Exhibit J ("City's General Disclosures"), City represents and warrants to the Developer as follows as of the Effective Date:

(a) To City's actual knowledge, there are no material physical or mechanical defects of the Existing City Property, and no violations of any laws, rules or regulations applicable to the Existing City Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) To City's actual knowledge, the City Documents, the documents listed as Item No. 3 in Exhibit J, and the document listed as Item No. 4 in Exhibit J that was furnished to City by the Developer, are all of the relevant documents and information pertaining to the condition of the Existing City Property in the possession of City's Real Estate Division.

(c) To City's actual knowledge, except as disclosed to the Developer, no document or instrument furnished by the City to the Developer pursuant to this Agreement contains any untrue statement of material fact or is materially misleading.

(d) City has not received written notification from any governmental agency of any condemnation, either instituted or planned to be instituted, by any governmental or quasi-governmental agency, that could detrimentally affect the use, operation or value of the Existing City Property.

(e) To City's actual knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Existing City Property are installed to the property lines of the Existing City Property.

(f) To City's actual knowledge, there are no easements or rights of way burdening the Existing City Property that are not of record with respect to the Existing City Property, and, except as disclosed to the Developer in writing prior to the Effective Date, to City's actual knowledge, there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Existing City Property to gain access to other real property. To City's actual knowledge, there are no disputes with regard to the location of any fence or other monument of the Existing City Property boundary nor any claims or actions involving the location of any fence or boundary.

(g) City has not received service of process with respect to any litigation that might detrimentally affect the use or operation of the Existing City Property for the development of the Tower as contemplated under the Development Agreement or this Agreement or the value of the Existing City Property or the ability of City to perform its obligations under this Agreement.

(h) City is the legal and equitable owner of the Existing City Property, with full right to convey the same subject to the terms of this Agreement, and without limiting the generality of the foregoing, and, except for the rights granted to the Developer hereunder, City has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Existing City Property.

(i) To City's actual knowledge, except as described in the City Documents or in City's General Disclosures: (A) the Existing City Property is not in violation of any Environmental Laws; (B) the Existing City Property is not now, nor has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited amounts as are customarily used in the operation of fire stations and that are used in compliance with Environmental Laws; (C) there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Existing City Property in violation of Environmental Laws; (D) the Existing City Property does not consist of any landfill or of any building materials that contain Hazardous Material in violation of Environmental Laws; (E) the Existing City Property is not subject to any

claim by any Regulatory Agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Existing City Property, or the migration of Hazardous Material from or to other property, and (F) except as disclosed in the City's General Disclosures, there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Existing City Property. As used herein, the following terms shall have the meanings below:

(A) **"Environmental Laws"** shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Existing City Property, including, without limitation, soil, air and groundwater conditions.

(B) **"Hazardous Material"** shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed, currently or in the future, by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Section 9601 et seq.), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the improvements or are naturally occurring substances on or about the Existing City Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1954, 42 U.S.C. Section 3011 et seq.

(C) **"Release"** or **"threatened release"** when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Existing City Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(j) There are no contracts encumbering the Existing City Property that will be binding on the Developer after the Closing except for the Accepted Developer Conditions of Title.

(k) Except for this Agreement, no party has the right to acquire or lease the Existing City Property.

(l) City is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

For purposes hereof, the phrase "to City's actual knowledge" shall mean the actual knowledge of [\_\_\_\_\_]. City represents that he is the person within City with the most knowledge of the Existing City Property, and is therefore in the best position to give these representations.

### 13. **RISK OF LOSS, CONDEMNATION, AND UNAVOIDABLE DELAY**

### **13.1 Risk of Loss or Condemnation of 447 Battery Property**

(a) If the 447 Battery Property is damaged or destroyed before the Closing Date, then to the extent 447 Battery Owner notifies Developer of such damage or destruction, Developer shall notify the City of such damage or destruction and whether it would increase the anticipated Project Cost or increase City's cost to operate the New Fire Station. If Developer reasonably determines such damage or destruction will cause the Project Cost to exceed the Project Budget or increase City's costs to operate the New Fire Station and does not elect (with no obligation to so elect) to cover such increase in the Project Cost, then Developer may elect to either terminate this Agreement by written notice of such termination to the City within forty-five (45) days following Developer's notification to City of such damage or destruction.

(b) If any of the 447 Battery Property or the New Fire Station are damaged or destroyed between the Closing Date and Final Completion (as defined in the Construction Management Agreement), the Developer shall be responsible, at its sole cost, for restoring such damage to the extent necessary to deliver the New Fire Station in the condition required by this Agreement and the Construction Management Agreement at such issuance.

(c) In the event of any threatened condemnation proceedings against the 447 Battery Property before the Closing, the parties shall meet and confer in good faith to discuss the potential condemnation and the appropriate response. If the proposed condemnation does not cause a Material Adverse Effect, as reasonably determined by the City, then Developer shall proceed in accordance with the terms of this Agreement and make any necessary adjustments to the New Fire Station, and City shall receive any and all condemnation proceeds. If the condemnation is proposed prior to the Closing and causes a Material Adverse Effect, then the City shall have the right to terminate this Agreement on forty-five (45) days prior written notice.

In the event of any condemnation proceedings against the 447 Battery Property between the Closing and Final Completion that does not cause a Material Adverse Effect, as reasonably determined by the City, Developer shall proceed and make any necessary adjustments to the New Fire Station in accordance with the terms of this Agreement and the Construction Management Agreement, and City shall receive any and all condemnation proceeds. In the event of any condemnation proceedings against the 447 Battery Property between the Closing and Final Completion that would have a Material Adverse Effect, as reasonably determined by the City, the City shall receive any and all condemnation proceeds and the parties shall meet and confer in good faith to determine alternatives to provide the parties with the benefit of the bargain they would have had under this Agreement and the Development Agreement. If the parties are not able to mutually agree to such alternatives, the matter shall be resolved through mediation pursuant to Section 5.2 and, if necessary, through binding arbitration pursuant to Section 5.1.

### **13.2 Risk of Loss or Condemnation of Existing City Property**

(a) If any of the Existing City Property is damaged or destroyed before the Closing, and such damage or destruction is estimated by Developer to cause the cost of constructing the Tower to increase by more than five percent (5%) and Developer does not elect (with no obligation to so elect) to cover such increase, then Developer shall have the right to terminate this Agreement by delivering written notice of such termination to City. Developer shall make its election to terminate this Agreement within forty-five (45) days of learning of the amount of the increase.

(b) In the event of any threatened condemnation proceedings against the Existing City Property prior to the Closing, Developer shall have the right to terminate this Agreement on forty-five (45) days prior written notice of receiving City's written notice of such proposed condemnation by delivering written notice of such termination to City.

**13.3 Unavoidable Delay.** “Unavoidable Delay” means any delay caused by any condition beyond the reasonable control of Developer, including strikes, labor disputes, acts of God, the elements, governmental (local, state and/or federal) restrictions, regulations or controls, governmental (local, state and/or federal) shut downs, medical conditions affecting (or expecting to affect) the general public including, epidemics and pandemics, enemy action, civil commotion, terrorism, fire, casualty, accidents, mechanical breakdowns or shortages of, or inability to obtain, labor, utilities or material. Developer shall deliver written notice of the occurrence of any Unavoidable Delay within two (2) business days of learning of that Unavoidable Delay, and shall provide City with no less than weekly updates on the status of any Unavoidable Delay.

#### **14. MAINTENANCE; CONSENT TO NEW CONTRACTS**

##### **14.1 Maintenance of Property**

(a) From the Effective Date and until the Closing Date, Developer shall use commercially reasonable efforts to cause Developer’s Affiliate to enforce its rights with respect to the 447 Battery Owner’s operation of the 447 Battery Property under Article 11 of the 447 Battery Purchase Agreement and to disapprove any proposed new contract, lease or other agreement for the 447 Battery Property except to the extent approved by the City in writing.

(b) From the Effective Date and until the Closing Date, City shall keep the Existing City Property in good order and condition and in compliance with applicable laws and shall not execute any documents that would continue to burden or affect the Existing City Property after the Closing, nor take, in its capacity as owner, any action at the Existing City Property that could adversely affect the ability of Developer to construct and develop the Tower. Notwithstanding anything to the contrary in the foregoing sentence, Developer agrees City’s current fire station operations will not be deemed to adversely affect Developer’s ability to construct, develop, and operate the Tower.

**14.2 City’s Consent to New Contracts Affecting the 447 Battery Purchase Agreement.** Except for the Project Contracts approved by the City and the Pre-Approved Project Contracts, Developer shall not enter into any contract, or any amendment thereof, that will affect its rights with respect to the 447 Battery Purchase Agreement or the 447 Battery Property, without in each instance obtaining the City’s prior written consent thereto. The City agrees that it shall not unreasonably withhold, delay, or condition any such consent.

#### **15. GENERAL PROVISIONS**

**15.1 Notices.** Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, upon receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property Re: 530 Sansome Property Exchange Telephone No. (415) 554-9860 Email Address: _____
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with copy to:	Carol Wong
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Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Re: 530 Sansome Property Exchange  
Telephone No. (415) 554-4711  
Email Address: carol.r.wong@sfcityatty.org

Developer: EQX Jackson SQ Holdco LLC  
c/o The Related Companies, L.P.  
44 Montgomery Street  
Suite 1300  
San Francisco, CA 94104  
Attn: Gino Canori  
Email Address: gcanori@related.com

with a copy to: EQX Jackson SQ Holdco LLC  
c/o The Related Companies, L.P.  
18201 Von Karman Avenue  
Suite 900  
Irvine, CA 92612  
Attn: Matthew Witte  
Email Address: matthew.witte@related.com

with a copy to: J. Abrams Law, P.C.  
538 Hayes Street  
San Francisco, California 94102  
Attention: Jim Abrams  
Telephone No.: (415) 999-4402  
Email Address: jabrams@jabramslaw.com

and a copy by email to: The Related Companies, L.P.  
30 Hudson Yards, 72nd Floor  
New York, New York 10001  
Attention: Richard O'Toole  
Email Address: rotoole@related.com

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by email, to the email addresses listed above, or as otherwise provided from time to time. However, neither party may give official or binding notice by email unless, because of circumstances beyond such party's control, (i) it is not reasonably possible to timely provide notice by a means other than by email, and (ii) at the time of sending such email, the sending party verbally notifies the other party of such email using the telephone numbers set forth above, with any such verbal simultaneous notice given by Developer to City also being made to \_\_\_\_\_ at (415) 554-9860 or to any other City person (and telephone number) designated to receive such additional verbal notice for City in a writing delivered by the Director of Property to the Developer.

**15.2 Brokers and Finders.** Neither party has had any contact or dealings regarding the Existing City Property or the 447 Battery Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the property transfers contemplated

herein, except for John Jensen and Richard Johnson of Colliers International (“**Colliers**”) representing City with respect to the Existing City Property and Edward Suharski of Fortress Real Estate Advisors Inc. (“**447 Battery Owner’s Broker**”) representing the 447 Battery Owner with respect to the 447 Battery Property, and neither party has engaged any other broker in connection with this proposed transaction. If Closing occurs, (i) Developer shall deliver prior to City’s written confirmation of Final Completion (as set forth in the Construction Management Agreement) \$193,000 (the “**Colliers Fee**”) to City as reimbursement for the broker’s fee paid by City to Colliers under their contract with the City, and (ii) 447 Battery Owner’s Broker shall earn a fee under their contract with the 447 Battery Owner, which is to be paid by the 447 Battery Owner to the 447 Battery Owner’s Broker under the 447 Battery Purchase Agreement at or before Closing. If any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section 15.2 shall survive the Closing for the applicable statute of limitations.

**15.3 Successors and Assigns.** Neither party shall assign or transfer its rights or obligations under this Agreement without first obtaining the prior written consent of the other party; provided Developer shall have the right to assign this Agreement (a) to an entity in which an affiliate of EQX Jackson Sq Holdco LLC is the managing member, the manager, or the sole member (directly or indirectly), except that Developer shall not be released from its obligations under this Agreement, and (b) as provided in Section 15.12(b). City will not unreasonably withhold, condition or delay its consent to a proposed transfer by Developer, taking into consideration (i) the proposed transferee having (A) experience completing an essential services building on a build to suit basis for a governmental agency in an urban setting, (B) experience developing and operating complex urban mixed use projects involving a luxury hotel similar in scope to the Tower, (C) a minimum net worth of \$300,000,000 and minimum liquidity of \$75,000,000, and (ii) other relevant factors, as reasonably determined by City, including the transferee’s ability to cause the 447 Battery Property to be transferred to City as provided for in this Agreement, the transferee’s assumption of Developer’s rights and obligations under the Construction Management Agreement and the Development Agreement, and transferee’s means and experience to promptly perform the Developer’s obligations under this Agreement and the Construction Management Agreement all such that the City would retain the benefit of its bargain under the Exchange Agreement and the Construction Management Agreement. Any approved assignee shall assume all of Developer’s obligations under this Agreement pursuant to an assignment and assumption agreement reasonably acceptable to the City.

**15.4 Amendments.** Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by the City and Developer.

**15.5 Continuation and Survival of Representations and Warranties; Survival of Certain Covenants and Conditions.** All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement shall, subject to the terms and conditions of this Agreement, be deemed to be material, and, (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing for a period of twenty-four (24) months following the Closing (and shall survive in any action for termination and/or damages based upon the alleged breach of the representation or warranty that is filed within the time frames permitted under this Agreement); provided, however, in no event shall the City’s or Developer’s liability, if any, with respect to the breach of any representations and warranties exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate. Except as otherwise expressly provided in this Agreement, none of the covenants or conditions of the Developer or the City under this Agreement shall (a) survive the termination



of this Agreement, except in connection with an action by such party for termination of this Agreement and damages based on the alleged breach of such covenant or condition, or (b) survive the Closing; provided, however, notwithstanding the foregoing or anything contained to the contrary in this Agreement, those covenants and conditions of the parties that relate to the transactions contemplated by the Closing shall expressly survive the Closing. In addition, notwithstanding anything to the contrary in this Agreement, to the extent either Developer or the City has actual knowledge of a breached representation or warranty at the time of the Closing, such party with actual knowledge of such breached representation or warranty shall have no right to assert a claim against the other party after the Closing, to the extent such claim relates to such breached representation or warranty.

**15.6 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**15.7 Merger of Prior Agreements.** The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

**15.8 Parties and Their Agents; Approvals.** As used herein, the term "**Agents**" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. Notwithstanding anything stated to the contrary herein, all approvals, consents or other determinations required by City hereunder shall be made by or through the Director of Property and any approval by the Director of Property shall constitute the approval by the City (as noted above, the City is acting in its proprietary capacity under this Agreement, so any City regulatory actions, including the issuance or denial of any Additional Approval, shall not be a City approval or action under this Agreement). All approvals, consents or other determinations required by the City or Developer must be in writing except to the extent deemed approved in accordance with the terms of this Agreement. Notwithstanding anything stated to the contrary in this Agreement with respect to all approvals and/or consents required under this Agreement, if a party fails to approve, disapprove or approve conditionally any approval or consent requested by the other party in writing within seven (7) business days following receipt of a written request for approval or consent, so long as the applicable documents are complete (and if such documents are not complete, the recipient shall so notify the sender in writing within three (3) business days following receipt of the documents), then the requesting party may submit a second written notice to the other party requesting approval of the submittal within three (3) business days after the second notice. A party's failure to timely respond to the other party's request for an approval, consent or determination of any matter shall constitute a failure by such party to comply with a material term of this Agreement.

**15.9 Interpretation of Agreement.** The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted

it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

**15.10 Attorneys' Fees.** If either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney 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 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. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

**15.11 Sunshine Ordinance.** Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Developer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

**15.12 Memorandum of Amended and Restated Conditional Property Exchange Agreement; Collateral Assignment of Agreement**

(a) Memorandum of Agreement. Promptly following the Effective Date, the parties shall execute and acknowledge an original copy of a memorandum of this Agreement in the form attached hereto as Exhibit O ("**Memorandum of Amended and Restated Conditional Property Exchange Agreement**"), and City shall promptly record the original copy of the Memorandum of Amended and Restated Conditional Property Exchange Agreement against the Existing City Property in the Official Records of the County in San Francisco, California. Developer shall additionally provide any documentation reasonably required by City to terminate the Memorandum of Conditional Property Exchange Agreement recorded in the Official Records of San Francisco County as Document No. 2020003389.

(b) Collateral Assignment of Agreement. Developer shall have the right to collaterally assign its rights under this Agreement to its Lender(s) as collateral security for loans funding Developer's acquisition of the Existing City Property and 447 Battery Property for the development and/or construction of the Project. Within twenty (20) days following Developer's written request, City shall execute such documents as may be reasonably required by Developer's lender(s) to perfect such collateral assignment and to allow such lender(s) to enforce the terms and conditions of this Agreement subject to such lender(s) assuming Developer's obligations under this Agreement. Without limiting the foregoing, City agrees to execute, within ten (10) days following Developer's written request, a Collateral Assignment of Amended and Restated Conditional Property Exchange Agreement with respect to its Lenders for such loans in the form of that attached hereto as Exhibit P.

(c) Copy of Notice of Default and Notice of Failure to Cure to Lender. Whenever the City shall deliver any notice or demand to the Developer with respect to any Developer Event of Default in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Lender having a Security Interest (as defined in the Development Agreement) on (directly or indirectly) all or a portion of the Existing Developer Property who has previously made a written request to the City therefor, at the last address of such Lender specified by that Lender 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 Lender at such applicable address. If the City delays or fails to provide such notice to a Lender as required by this Section, the time allowed to the Lender for cure under Section 15.12(d) shall be extended by the number of days until notice is given. 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 Lender be mailed to the City at the address for notices under this Agreement. Any Lender relying on the protections set forth in this Section 15.12 shall send to the City a copy of any notice of default and notice of sale.

(d) Lender's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 15.12(c), each Lender shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Developer Event of Default, plus an additional period of: (a) sixty (60) days to cure a monetary Developer Event of Default; and (b) one hundred twenty (120) days to cure a non-monetary Developer Event of Default which is susceptible of cure by the Lender without obtaining title to any of the Existing Developer Property. If a Developer 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 Lender's applicable cure period: (i) the Lender notifies the City that it intends to proceed with due diligence to foreclose the Security Interest or otherwise obtain title to the portion of the Existing Developer Property encumbered by the Security Interest; and (ii) the Lender commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Lender diligently proceeds to cure those events of default: (A) which are required to be cured by the Lender and are susceptible of cure by the Lender, and (B) of which the Lender has been given notice by the City.

**15.13 Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**15.14 Effective Date.** As used herein, the term "**Effective Date**" shall mean the date on which (i) the City's Board of Supervisors and Mayor adopt a resolution approving and authorizing the Director of Property's execution of this Agreement and the transactions contemplated hereby, and (ii) each party executes and delivers this Agreement to the other party.

**15.15 Severability.** If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

**15.16 Agreement Not to Market.** Developer agrees that unless and until this Agreement terminates pursuant to its terms, neither Developer, nor any Agent on behalf of Developer, shall negotiate with any other parties pertaining to the lease or purchase of the 447 Battery Property or

assignment of the 447 Battery Purchase Agreement. The City agrees that unless and until this Agreement terminates pursuant to its terms, neither the City, nor any Agent on behalf of the City, shall negotiate with any other party for the lease or purchase of the Existing City Property.

**15.17 Confidential Information.** Developer understands and agrees that, in the performance of its obligations under this Agreement, Developer may have access to the City's proprietary or confidential information, the disclosure of which to third parties may be damaging to the City. City understands and agrees that, in the performance of its obligations under this Agreement, City may have access to Developer's proprietary or confidential information, the disclosure of which to third parties may be damaging to Developer. Each party agrees to identify any information it gives to the other that it deems proprietary or confidential, and each party agrees to use reasonable care to safeguard any proprietary or confidential information from public disclosure. Notwithstanding the foregoing, if and to the extent any document or information is subject to disclosure under federal, state, or local law, including the California Public Records Act or the San Francisco Sunshine Ordinance, or a court order, such disclosure shall not be deemed a violation of this Agreement. Each party shall use reasonable efforts to notify the other of any disclosure request relating to any document marked as proprietary or confidential and discuss the basis for disclosing or withholding the document. If a party determines that it must, under applicable law, disclose a document that the other party has marked as proprietary and confidential, it shall provide the other party not less than forty-eight (48) hours' notice before any such disclosure in order to allow for the noticed party to seek an injunction to prevent the disclosure, provided that failure to provide such notice or any disclosure shall not be the basis for any liability under this Agreement.

**15.18 Prohibitions on Campaign Contributions.** For the purposes of this Section, a "City Contractor" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for that contract or twelve (12) months after the date that contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Developer further acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 of the San Francisco Campaign and Governmental Conduct Code by the time it submitted a proposal for the contract to the City, and provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

**15.19 Time of the Essence.** Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

**15.20 Intentionally Omitted.**

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

**15.22 Tropical Hardwood and Virgin Redwood Ban,** The City and County of San Francisco 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.

**15.23 Estoppel.** Developer may, at any time, and from time to time, deliver written notice to the Director of Property requesting that the Director of Property certify to Developer and any lender that is, or is considering the Project (“**Lender**”) in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the City and Developer; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended or modified, identifying the amendments or modifications and stating their date and, if applicable, recording information; and (iii) there is no Developer Event of Default in the performance of its obligations under this Agreement, or if there is a Developer Event of Default, describing therein the nature and amount of that Developer Event of Default. If Developer requests that the City certify as to any additional matters, the City will confer and work expeditiously and in good faith with Developer to provide such certification that is reasonably satisfactory to Developer and any Lender that is funding, or considering Developer’s request to fund, the Project, provided that the Director of Property shall certify only as to their actual knowledge, and the City shall not have any obligation to certify as to any such matters that are unreasonable, overly broad, inconsistent with this Agreement, involve legal conclusions, or are subjective in nature. The Director of Property, acting on behalf of the City, shall execute and return a certificate addressing items (i)-(iii) (the “**Required Certifications**”) within thirty (30) days following receipt of the request (the “**Estoppel Outside Date**”), and if the Director of Property fails to execute and return such certificate on or before the Estoppel Outside Date, the Director of Property, acting on behalf of the City, shall be deemed to have certified to Developer and any Lender that the Required Certifications are true and correct as of the Estoppel Outside Date. Each party acknowledges that any lender, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel within the Existing Developer Property before the Closing, or within the Existing Developer Property or Existing City Property after Closing, shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

**15.24 Section References for Terms Defined in this Agreement.** Each of the following terms is defined in the Section of this Agreement or in the Exhibit listed opposite it.

“447 Battery Bill of Sale” is defined in Section 7.3.

“447 Battery Building” is defined in Recital D.

“447 Battery Owner” is defined in Recital D.

“447 Battery Owner’s Broker” is defined in Section 15.2.

“447 Battery Personal Property” means all personal property owned by the 447 Battery Owner located on or in or used in connection with the 447 Battery Property or Existing 447 Battery Improvements as of the Closing Date, to the extent transferable to the Developer on the Closing Date.

“447 Battery Purchase Agreement” is defined in Recital D.

“447 Battery Property” is defined in Recital D.

“447 Battery Property Deed” is defined in Section 7.1(b).

“530 Sansome Appurtenances” is defined in Section 6.2(b).

“530 Sansome Intangible Property” is defined in Section 6.2(b).

“530 Sansome Personal Property” is defined in Section 6.2(b).

“530 Sansome Property” is defined in Section 6.2(b).

“Accepted City Conditions of Title” is defined in Section 7.2(b).

“Accepted Developer Conditions of Title” is defined in Section 7.2(a).

“Additional Approvals” is defined in Section 3.1(a).

“Agents” is defined in Section 15.8.

“Agreement” is defined in the Introduction.

“Anticipated Closing Date” is defined in the Section 10.2(a).

“Apportionment” is defined in Section 3.3(e).

“Approvals” is defined in Recital K.

“Approved Contractors” is defined in Section 3.3(d).

“Arbitration Matter” is defined in Section 5.1(a).

“Arbitration Notice” is defined in Section 5.1(b).

“Architect” is defined in Section 2.1.

“Architect Contract” is defined in Section 2.1.

“Assignment of 447 Battery Intangible Property” is defined in Section 7.4(a).

“CEQA” is defined in Recital I.

“CEQA Findings” is defined in Recital I.

“CEQA Guidelines” is defined in Recital I.

“City” is defined in the initial paragraph of this Agreement.

“City Assignment of Intangible Property” is defined in Section 7.4(a).

“City Contractor” is defined in Section 15.18.

“City Documents” is defined in Section 8.1(b).

“City Event of Default” is defined in Section 10.6(a).

“City Parties” is defined in Section 8.4.

“City Releasers” is defined in Section 8.3.

“City’s Conditions Precedent” is defined in Section 9.1.

“City’s General Disclosures” is defined in Section 12.3.

“Closing” is defined in Section 10.2(a).

“Closing Date” is defined in Section 10.2(a).

“Colliers” is defined in Section 15.2.

“Completion Guaranty” is defined in Section 4.5.

“Conditional Use Authorization” is defined in Recital J.

“Conditions Precedent” is defined in Section 9.2.

“Construction Documentation” is defined in Section 3.3(a).

“Construction Management Agreement” is defined in Section 2.3.

“DA Ordinance” is defined in Recital K.

“Developer” is defined in the first paragraph of this Agreement.

“Developer’s Conditions Precedent” is defined in Section 9.2.

“Developer Documents” is defined in Section 8.1(a).

“Developer Event of Default” is defined in Section 10.6(a).

“Developer Title Policy” is defined in Section 7.2(a).

“Developer’s General Disclosures” is defined in Section 12.2.

“Developer Parties” is defined in Section 8.3.

“Developer Releasers” is defined in Section 8.4.

“Development Action” is defined in Section 3.3(b).

“Development Agreement” is defined in Recital F.

“Director of Property” is defined in Section 2.2.

“Effective Date” is defined in Section 15.14.

“Escrow” is defined in Section 10.1.

“Estoppel Certificate Outside Date” is defined in Section 15.23.

“Existing 530 Sansome Improvements” is defined in Section 6.2(b).

“Existing City Property” is defined in Recital A.

“Existing City Property Bill of Sale” is defined in Section 7.3.

“Existing City Property Deed” is defined in Section 7.1(a).

“Existing Developer Property” is defined in Recital B.

“Existing Fire Station” is defined in Recital A.

“Existing Developer Property” is defined in Recital B.

“FEIR” is defined in Recital I.

“Fire Station Plans” is defined in Section 3.1(c).

“Final Construction Contract” is defined in Section 2.2.

“Form Construction Contract” is defined in Section 2.2.

“General Contractor” is defined in Section 2.2.

“General Plan Amendment Ordinance” is defined in Recital K.

“Guarantor” is defined in Section 4.5.

“Hazardous Material” is defined in Section 12.2(n)(B).

“JAMS” is defined in Section 5.1(b).

“Key Terms” is defined in Recital F.

“Landmark Ordinance” is defined in Recital D.

“Leases” is defined in Section 8.2(a).

“Lender” is defined in Section 15.23.

“Material Adverse Effect” is defined in Section 9.2.

“Mediation Matter” is defined in Section 5.2(a).

“Mediation Request” is defined in Section 5.2(b).



“Memorandum of Amended and Restated Conditional Property Exchange Agreement” is defined in Section 15.12(a).

“Mitigation Measures” is defined in Recital I.

“New City Property” is defined in Section 6.2.

“New Fire Station” is defined in Recital C.

“Original CPEA” is defined in Recital C.

“Original Project” is defined in Recital C.

“Original Project Site” is defined in Recital C.

“Other Project Contracts” is defined in Section 2.4.

“Planning Approvals” is defined in Recital J.

“Planning Code Amendment Ordinance” is defined in Recital K.

“Post-Closing Action” is defined in Section 3.5.

“Pre-Approved Project Contract” is defined in Section 2.3(a).

“Project” is defined in Recital E.

“Project Budget” is defined in Section 3.1(c).

“Project Contractor” is defined in Section 2.5(a).

“Project Contracts” is defined in Section 2.5(a).

“Project Cost” is defined in Section 4.1.

“Reporting Requirements” is defined in Section 10.7.

“Required Certification” is defined in Section 15.23.

“Rules” is defined in Section 5.1(c).

“Shadow Findings” is defined in Recital L.

“Submission Period” is defined in Section 2.4.

“Survey” is defined in Section 9.1(g).

“TCO” is defined in Section 4.4.

“Tentative Map” is defined in Section 3.1(b).

“Third-Party Challenge” is defined in Section 3.5.

“Title Company” is defined in Section 7.2(a).

“Tower” is defined in Recital E.

“Unavoidable Delay” is defined in Section 13.3.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DEVELOPER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

The parties have duly executed this Agreement as of the respective dates written below.

**DEVELOPER:**

EQX JACKSON SQ HOLDCO LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Sarah R. Oerth  
Director of Property  
  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

**EXHIBIT A-1**

**Legal Description of Existing City Property**

LEGAL DESCRIPTION

530 SANSOME STREET (APN 0206-017)

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS DESCRIBED IN THAT CERTAIN DEED RECORDED OCTOBER 4, 1967 IN BOOK B182, PAGE 400, OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF WASHINGTON STREET (49.229 FEET WIDE) AND THE EASTERLY LINE OF SANSOME STREET (67.44 FEET WIDE); RUNNING THENCE SOUTHERLY AND ALONG SAID LINE OF SANSOME STREET 122 FEET TO THE NORTHERLY LINE OF MERCHANT STREET (31.00 FEET WIDE); THENCE AT A RIGHT ANGLE EASTERLY ALONG SAID LINE OF MERCHANT STREET 90.26 FEET; THENCE NORTHERLY 122 FEET, MORE OR LESS, TO A POINT ON SAID SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 90.292 FEET EASTERLY FROM SAID EASTERLY LINE OF SANSOME STREET; THENCE WESTERLY ALONG SAID LINE OF WASHINGTON STREET 90.292 FEET TO THE POINT OF COMMENCEMENT.

BEING A PART OF BEACH AND WATER LOTS 133, 134, AND 135

EXCEPTING THEREFROM THAT PORTION OF WASHINGTON STREET THAT WAS DEDICATED PER RESOLUTION NO. 403-74 DATED JUNE 3, 1974 AND SHOWN AS PARCEL 1 ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF WASHINGTON STREET FROM BATTERY ST. TO SANSOME ST." FILED FOR RECORD SEPTEMBER 11, 1974, IN BOOK "W" OF MAPS, AT PAGE 27, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE FORMER SOUTHERLY LINE OF WASHINGTON STREET (49.229 FEET WIDE) PRIOR TO THE DEDICATION THEREOF PER SAID RESOLUTION NO. 403-74 WITH THE EASTERLY LINE OF SANSOME STREET (67.44 FEET WIDE); THENCE EASTERLY ALONG SAID LINE OF FORMER WASHINGTON STREET 90.292 FEET; THENCE ON A DEFLECTION ANGLE OF 90°00'54" TO THE RIGHT, ALONG A LINE WHOSE END POINT IS ON THE NORTHERLY LINE OF MERCHANT STREET (31.00 FEET WIDE), DISTANT THEREON 90.26 FEET EASTERLY FROM SAID EASTERLY LINE OF SANSOME STREET, 23.00 FEET TO A POINT ON THE CURRENT SOUTHERLY LINE OF WASHINGTON STREET (72.229 FEET WIDE) AFTER THE DEDICATION THEREOF PER SAID RESOLUTION NO. 403-74, SAID SOUTHERLY LINE OF WASHINGTON STREET BEING ON A LINE THAT IS PARALLEL WITH AND PERPENDICULARLY DISTANT SOUTHERLY 23.00 FEET FROM SAID FORMER LINE OF WASHINGTON STREET; THENCE ON A DEFLECTION ANGLE OF 89°59'06" TO THE RIGHT, ALONG SAID CURRENT SOUTHERLY LINE OF WASHINGTON STREET 90.286 FEET TO SAID EASTERLY LINE OF SANSOME STREET; THENCE AT A RIGHT ANGLE NORTHERLY, ALONG SAID LINE OF SANSOME STREET 23.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 8,937± SQ.FT.

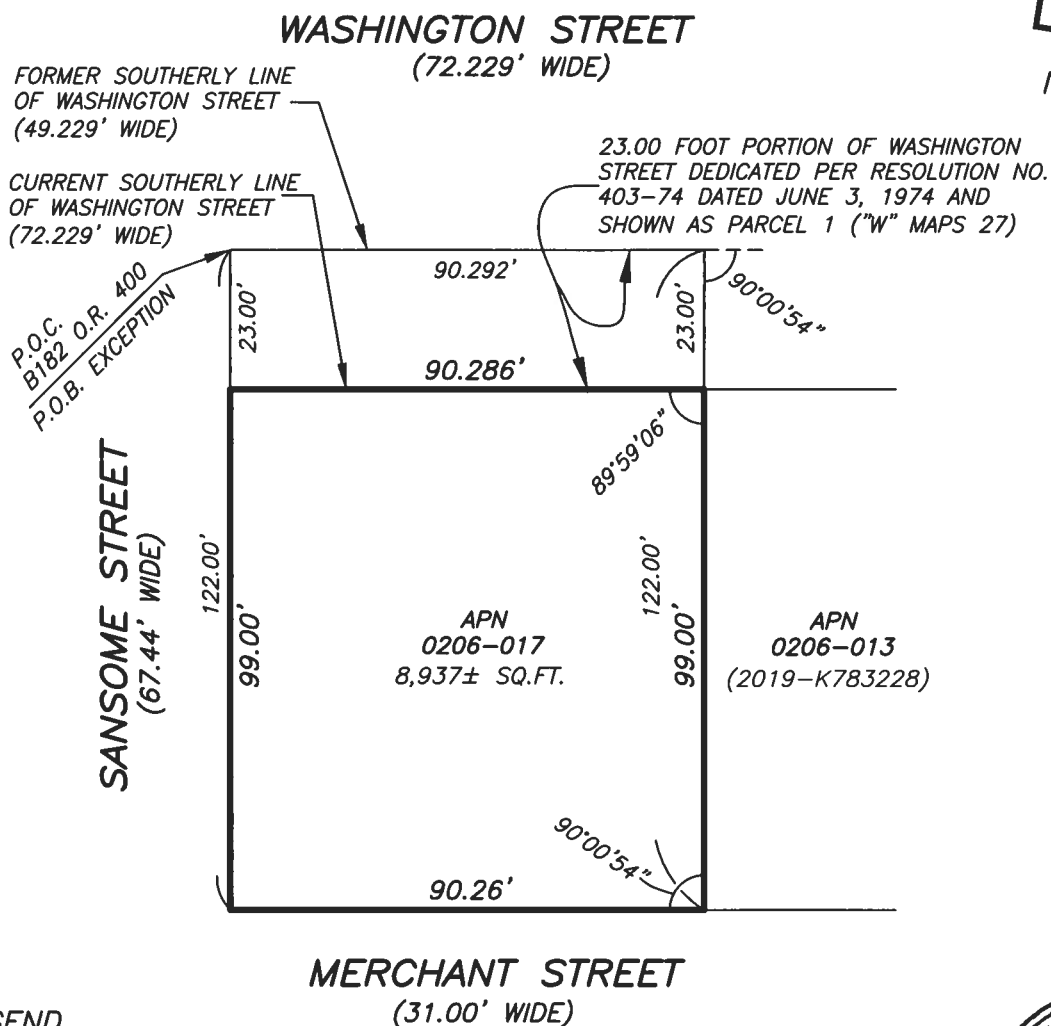
THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.



JUNE 3, 2025

BENJAMIN B. RON, PLS 5015





#### LEGEND

APN ASSESSOR'S  
PARCEL NUMBER  
P.O.C. POINT OF COMMENCEMENT  
P.O.B. POINT OF BEGINNING  
O.R. OFFICIAL RECORDS

#### MAP REFERENCE

"MAP SHOWING THE WIDENING OF WASHINGTON STREET FROM BATTERY ST. TO SANSOME ST.", WHICH MAP WAS FILED FOR RECORD SEPTEMBER 11, 1974, IN BOOK "W" OF MAPS, AT PAGE 27.

#### GENERAL NOTES

1. ALL PROPERTY LINE ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.
2. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.



ASSESSOR'S  
BLOCK 0206  
SAN FRANCISCO,  
CALIFORNIA

### PLAT TO ACCOMPANY LEGAL DESCRIPTION

BY JP CHKD. BR DATE 5-29-25 SCALE NONE SHEET 1 OF 1 JOB NO. S-9745

**MARTIN M. RON ASSOCIATES, INC.**  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-9745 BNDY PLAT\_LOT 17.dwg

**EXHIBIT A-2**

**Legal Description of Existing Developer Property**

LEGAL DESCRIPTION

APN 0206-013

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND WHICH IS SITUATED AS AFORESAID, AND WHICH IS BOUNDED BY A LINE COMMENCING AT A POINT IN THE SOUTHERLY LINE OF WASHINGTON STREET (AS EXISTED PRIOR TO THE WIDENING THEREOF), DISTANT THEREON 90 FEET AND 3-1/2 INCHES EASTERLY FROM THE POINT OF INTERSECTION OF SAID LINE OF WASHINGTON STREET WITH THE EASTERLY LINE OF SANSOME STREET; RUNNING THENCE EASTERLY ON AND ALONG SAID SOUTHERLY LINE OF WASHINGTON STREET 47 FEET 5-1/2 INCHES; THENCE SOUTHERLY 122 FEET, MORE OR LESS, AND TO A POINT IN THE NORTHERLY LINE OF MERCHANT STREET WHICH IS DISTANT THEREON 137 FEET 9-1/2 INCHES EASTERLY FROM THE POINT OF INTERSECTION OF SAID LINE OF MERCHANT STREET WITH THE EASTERLY LINE OF SANSOME STREET; THENCE WESTERLY, ON AND ALONG SAID LINE OF MERCHANT STREET, 47 FEET AND 6-3/8 INCHES; AND THENCE NORTHERLY 122 FEET TO THE SAID SOUTHERLY LINE OF WASHINGTON STREET AND SAID POINT OF COMMENCEMENT. THE SAME BEING A PORTION OF BEACH AND WATER LOTS NUMBERS 133, 134 AND 135, AS THE SAME ARE NUMBERED, DELINEATED AND SHOWN ON THE OFFICIAL MAP OF SAID CITY AND COUNTY OF SAN FRANCISCO.

EXCEPTING THEREFROM SUCH PORTION OF THE SAME AS IS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, DATED MAY 14, 1967 AND RECORDED AUGUST 9, 1967 IN BOOK B167, OF OFFICIAL RECORDS, PAGES 723 AND 724.

CONTAINING 4,703± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

B. B. Ron

JUNE 3, 2025

BENJAMIN B. RON, PLS 5015





LEGAL DESCRIPTION

APN 0206-014

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 137 FEET AND 9 INCHES EASTERLY FROM THE EASTERLY LINE OF SANSOME STREET; RUNNING THENCE EASTERLY ALONG SAID LINE OF WASHINGTON STREET 40 FEET AND 6 INCHES, MORE OR LESS, TO A POINT ON THE SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 97 FEET WESTERLY FROM THE WESTERLY LINE OF BATTERY STREET; THENCE AT A RIGHT ANGLE SOUTHERLY 122 FEET TO THE NORTHERLY LINE OF MERCHANT STREET; THENCE WESTERLY ALONG SAID LINE OF MERCHANT STREET 40 FEET AND 6 INCHES, MORE OR LESS, TO A POINT ON THE SAID LINE OF MERCHANT STREET, DISTANT THEREON 137 FEET AND 9-1/2 INCHES EASTERLY FROM THE EASTERLY LINE OF SANSOME STREET; RUNNING THENCE NORTHERLY 122 FEET TO THE SOUTHERLY LINE OF WASHINGTON STREET AND THE POINT OF BEGINNING.

BEING PART OF 50 VARA BLOCK NO. 35

EXCEPTING THEREFROM, THAT PORTION OF SAID LAND CONVEYED TO THE CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, BY DEED RECORDED MAY 26, 1967, IN BOOK B146, PAGE 875 OF OFFICIAL RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 137.750 FEET EASTERLY FROM THE EASTERLY LINE OF SANSOME STREET, AND THENCE RUNNING EASTERLY ALONG SAID LINE OF WASHINGTON STREET 40.50 FEET, MORE OR LESS, TO A POINT ON SAID SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 97 FEET WESTERLY FROM THE WESTERLY LINE OF BATTERY STREET; THENCE AT A RIGHT ANGLE SOUTHERLY 23 FEET; THENCE AT A RIGHT ANGLE WESTERLY 40.50 FEET, MORE OR LESS, TO A LINE DRAWN FROM THE POINT OF BEGINNING TO A POINT ON THE NORTHERLY LINE OF MERCHANT STREET, DISTANT THEREON 137.792 FEET EASTERLY FROM THE EASTERLY LINE OF SANSOME STREET; THENCE RUNNING NORTHERLY ALONG SAID LINE SO DRAWN 23 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING A PORTION OF 50 VARA BLOCK NO. 35

CONTAINING 4,094± SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

*Bj-B.R.*

JUNE 3, 2025

BENJAMIN B. RON, PLS 5015



FORMER SOUTHERLY LINE  
OF WASHINGTON STREET  
(49.229' WIDE)

AREA EXCEPTED PER  
BOOK "W" MAPS,  
PAGE 27

WASHINGTON STREET  
(72.229' WIDE)

CURRENT SOUTHERLY LINE  
OF WASHINGTON STREET  
(72.229' WIDE)

EX. LOT 013  
(B167 O.R. 723)

EX. LOT 014  
(B146 O.R. 875)

23 FOOT STREET  
WIDENING PER BOOK  
"W" MAPS, PAGE 27

276.125 MEAS. &  
BLOCK DIAGRAM [1]

276.125 MEAS. &  
BLOCK DIAGRAM [1]

276.125 MEAS. &  
BLOCK DIAGRAM [1]

276.125 MEAS. &  
BLOCK DIAGRAM [1]

SANSOME STREET  
(67.44' WIDE)

122.00' DEED, MEAS. & BLOCK DIAGRAM [1]

99.00'

23.00'

90.292'

90.286'

90.292'

90.286'

90.292'

90.286'

90.292'

90.286'

90.292'

90.286'

90.292'

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90.292'

90.286'

90.292'

90.286'

90.292'

90.286'

90.292'

APN  
0206-017  
LOT AREA =  
8,937± SQ.FT.

APN  
0206-013  
LOT AREA =  
4,703± SQ.FT.

APN  
0206-014  
LOT AREA =  
4,094± SQ.FT.

APN 0206-018 THRU 024  
(23 C.M. 17)  
97.00'

APN  
0206-002  
LOT AREA =  
7,178 SQ.FT.

122.00 MEAS. & BLOCK DIAGRAM [1]

BATTERY STREET  
(76.00' WIDE)

**LEGEND**

- APN ASSESSOR'S  
PARCEL NUMBER  
P.O.C. POINT OF COMMENCEMENT  
P.O.B. POINT OF BEGINNING  
EX. EXCEPTION  
MEAS. MEASURED  
O.R. OFFICIAL RECORDS  
C.M. CONDOMINIUM MAPS  
PERIMETER  
PROPERTY LINE  
LOT LINE

**MAP REFERENCE**

- [1] BLOCK DIAGRAM OF 50 VARA BLOCK 35  
DATED APRIL 24, 1908 ON FILE IN THE  
OFFICE OF THE CITY AND COUNTY SURVEYOR.  
[2] "MAP SHOWING THE WIDENING OF  
WASHINGTON STREET FROM BATTERY ST.  
TO SANSOME ST.", WHICH MAP WAS FILED  
FOR RECORD SEPTEMBER 11, 1974, IN  
BOOK "W" OF MAPS, AT PAGE 27.

**GENERAL NOTES**

1. ALL PROPERTY LINE ANGLES ARE 90 DEGREES  
UNLESS NOTED OTHERWISE.  
2. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

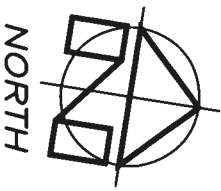
**447 BATTERY AND 530 SANSOME PROJECT**

BY JP CHKD. BR DATE 6-3-25 SCALE NONE SHEET 1 OF 1 JOB NO. S-9745

MARTIN M. RON ASSOCIATES, INC.  
LAND SURVEYORS

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500

S-9745 BNDY PLAT\_LOTS 2-13-14-17.dwg



**EXHIBIT B**

**Legal Description of 447 Battery Property**

LEGAL DESCRIPTION

APN 0206-002

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF MERCHANT STREET AND THE WESTERLY LINE OF BATTERY STREET; RUNNING THENCE NORTHERLY ALONG SAID LINE OF BATTERY STREET 74 FEET; THENCE AT A RIGHT ANGLE WESTERLY 97 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY 74 FEET TO THE NORTHERLY LINE OF MERCHANT STREET; AND THENCE AT A RIGHT ANGLE EASTERLY ALONG SAID LINE OF MERCHANT STREET 97 FEET TO THE POINT OF BEGINNING.

BEING A PART OF 50 VARA BLOCK NO. 35.

CONTAINING 7,178 SQ.FT.

THIS DESCRIPTION WAS PREPARED BY ME IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

*B. B. Ron*

JUNE 3, 2025

BENJAMIN B. RON, PLS 5015



**WASHINGTON STREET**  
(72.229' WIDE)

CURRENT SOUTHERLY LINE  
OF WASHINGTON STREET  
(72.229' WIDE)

AREA EXCEPTED PER  
BOOK "W" MAPS.

EX. LOT 013 \_\_\_\_\_  
(B167 O.R. 723)

**BLOCK DISTANCE =  
276.125 MEAS. &  
BLOCK DIAGRAM [1]**

EX. LOT 014  
(B146 O.R. 875)

23 FOOT STREET  
WIDENING PER BOOK  
"W" MAPS, PAGE 27  
[2]

**SANSOME STREET**  
(67.44' WIDE)

122.00' DEED, MEAS. & BLOCK DIAGRAM [1]

**99.00'**

APN  
0206-017  
LOT AREA =  
8,937± SQ.FT.

APN  
0206-013  
LOT AREA =  
4,703± SQ.FT.

APN  
0206-014  
LOT AREA = 66  
4,094± SQ.FT.

APN 0206-018 THRU 024  
(23 C.M. 17)  
97.00'  
25.00'

APN  
0206--002  
LOT AREA =  
7,178 SQ.FT.

BLOCK DISTANCE =  
122.00 MEAS. & BLOCK DIAGRAM [1]

**BATTERY STREET**  
(76.00' WIDE)

LOT 002 / P.O.B.

### LEGEND

APN ASSESSOR'S

PARCEL NUMBER

**P.O.C. POINT OF COMMENCEMENT**

P.O.B. POINT OF BEGINNING

**EX. EXCEPTION**

MEAS. MEASURED

O.R. OFFICIAL RECORDS

**C.M. CONDOMINIUM MAPS**

PERIMETER  
PROPERTY LINE

--- LOT LINE ---

**MAP REFERENCE**

[1] BLOCK DIAGRAM DATED APRIL 24, OFFICE OF THE C

[2] "MAP SHOWING THE WASHINGTON STREET TO SANSOME ST." FOR RECORD SEED BOOK "W" OF MA

[1] BLOCK DIAGRAM OF 50 VARA BLOCK 35 DATED APRIL 24, 1908 ON FILE IN THE OFFICE OF THE CITY AND COUNTY SURVEYOR.

[2] "MAP SHOWING THE WIDENING OF WASHINGTON STREET FROM BATTERY ST. TO SANSOME ST., WHICH MAP WAS FILED FOR RECORD SEPTEMBER 11, 1974, IN BOOK "W" OF MAPS, AT PAGE 27.

[2] "MAP SHOWING THE WIDENING OF WASHINGTON STREET FROM BATTERY ST. TO SANSOME ST.", WHICH MAP WAS FILED FOR RECORD SEPTEMBER 11, 1974, IN BOOK "W" OF MAPS, AT PAGE 27.

TO SANSOME ST., WHICH MAP WAS FILED FOR RECORD SEPTEMBER 11, 1974, IN BOOK "W" OF MAPS, AT PAGE 27.

BOOK "W" OF MAPS, AT PAGE 27.

## GENERAL NOTES

1. ALL PROPERTY LINE ANGLES ARE 90 DEGREES UNLESS NOTED OTHERWISE.

2. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

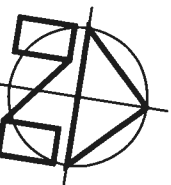
447 BATTERY AND 530 SANSOME PROJECT

ASSESSOR'S  
BLOCK 0206  
SAN FRANCISCO,  
CALIFORNIA

BY JP CHKD. BR DATE 6-3-25 SCALE NONE SHEET 1 OF 1 JOB NO. S-9745

**MARTIN M. RON ASSOCIATES, INC.**  
**LAND SURVEYORS**

859 HARRISON STREET  
SAN FRANCISCO, CA. 94107  
(415) 543-4500  
S-9745 BNDY PLAT\_LOTS 2-13



NORTH

S-9745 BNDY PLAT\_LOTS 2-13-14-17.dwg

**EXHIBIT C**

**Fire Station Plans**

As described in Section 3.1(c), the Fire Station Plans consist of (i) the 50% Schematic Design Plans of the New Fire Station prepared by the Architect and dated June 7, 2024, and (ii) the SFFD Fire Station Design Standards prepared by San Francisco Public Works and dated July 31, 2025

The first page of each document comprising the Fire Station Plans is attached to this Exhibit, with the full copy of the Fire Station Plans on file with the Director of Property.



**Owner**  
Related  
44 Montgomery Street, Suite 1300  
San Francisco, California 94104

**Architecture/Interiors**  
Skidmore, Owings & Merrill LLP  
One Maritime Plaza  
San Francisco, CA 94111

**Structural**  
Magnusson Klemencic Associates  
1301 Fifth Avenue, Suite 3200  
Seattle, WA 98101

**Civil/Geotech**  
Langan  
135 Main Street, Suite 1500  
San Francisco, CA 94105

**Mechanical/Electrical/Plumbing**  
Meyers+ Engineers  
98 Battery Street, Suite 500  
San Francisco, CA 94111

**Vertical Transportation**  
Edgett Williams Consulting Group  
102 East Blithedale Avenue, Suite 1  
Mill Valley, CA 94941

**Trash Systems**  
American Trash Management  
1900 Powell Street, Suite 890  
Emeryville, CA 94608

**Parking**  
International Parking Design  
560 14th Street, Suite 300  
Oakland, CA 94613

**Wind**  
RWDI Climate & Performance Engineering  
600 Southgate Drive, Guelph, ON N1G 4P6  
Canada

**Fire Code**  
The Fire Consultants  
2890 North Main St, Suite 210  
Walnut Creek, CA 94597

**Shadow**  
Precision Design  
1806 Balboa St, #6b  
San Francisco, CA 94129

**Landscape**  
Surface Design  
Pier 33 North, Suite 200  
San Francisco, CA 94111

**Wind**  
RWDI Climate & Performance Engineering  
600 Southgate Drive, Guelph, ON N1G 4P6  
Canada

# 530 SANSOME - FIRE STATION 13

447 BATTERY STREET  
SAN FRANCISCO, CA 94111

50% SCHEMATIC DESIGN  
VOLUME 1  
ARCHITECTURE/STRUCTURAL/MECHANICAL/ELECTRICAL/  
PLUMBING/TECHNOLOGY/CIVIL  
JUNE 7 2024

SOM





# SFFD FIRE STATION DESIGN STANDARDS

JULY 31, 2025

Prepared by  
**San Francisco Public Works**  
Bureau of Architecture  
49 s Van Ness Ave – 11<sup>th</sup> Floor  
San Francisco CA 94103





**EXHIBIT D**

**Project Budget**

[To be attached]

SFFD FIRE STATION 13 AT 447 BATTERY ST  
PROJECT BUDGET

Category	Vendor	Factor	Factor	Total
<b>LAND ACQUISITION</b>				
Land Purchase Price				\$0
New City Parcel Transfer Tax		City parcel exempt		N/A
Real Property Taxes		City parcel exempt		N/A
Title & Escrow Fees				\$18,880
<b>Total Land Acquisition</b>				<b>\$18,880</b>
<b>HARD COSTS</b>				
Trade Costs		See Hard Cost detail		\$26,077,143
General Conditions & Overhead			10.03%	\$2,614,876
Insurance & Subguard			1.55%	\$444,726
Bonds			3.00%	\$874,102
Gross Receipts Tax			0.63%	\$5,507
Construction Management			3.60%	\$1,081,018
Hard Cost Contingency			10.00%	\$3,001,635
Escalation			6.00%	\$1,800,981
<b>Total Hard Costs</b>				<b>\$35,899,989</b>
<b>PROFESSIONAL FEES</b>				
Architect - Executive				\$500,000
Architect - Design				\$600,000
Civil Engineer				\$100,000
Dry Utility Engineer				\$25,000
Environmental Engineer				\$50,000
Geotechnical Engineer				\$150,000
Structural Engineer				\$150,000
Structural Engineer Peer Review				\$25,000
MEP Engineer thru Design Development				\$45,000
AV/LV/Security Engineer				\$50,000
Fire & Life Safety Engineer				\$50,000
Sustainability Consultant				\$25,000
Acoustical Engineer				\$35,000
Traffic Engineer				\$15,000
Signage Designer				\$35,000
Waterproofing Engineer				\$35,000
Accessibility Consultant				\$35,000
Interior Mock Ups				\$0
Elevator Consultant				\$15,000
Trash Consultant				\$15,000
Parking Consultant				\$15,000
Testing & Inspections				\$100,000
Reprographics				\$10,000
Surveyor				\$25,000
Construction Estimator				\$25,000
Permit Expeditor				\$25,000
Archaeologist & Historic				\$25,000
EIR Consultant				\$25,000
Other Consultants				\$100,000
<b>Total Professional Fees</b>				<b>\$2,305,000</b>
<b>PERMITS &amp; FEES</b>				
Permits & Approvals	Public Art Fee, Art Relocation, City Staff			\$800,000
<b>Total Permits &amp; Fees</b>				<b>\$800,000</b>
<b>LEGAL &amp; ACCOUNTING</b>				
Legal & Accounting				\$1,000,000
<b>Total Legal &amp; Accounting</b>				<b>\$1,000,000</b>
<b>FINANCING COSTS</b>				
Senior Loan Financing Fees				\$250,000
Construction Loan Interest Reserve				\$3,500,000
<b>Total Financing Costs</b>				<b>\$3,750,000</b>
<b>OTHER SOFT COSTS</b>				
Developer Fee		Allocated to Tower		\$0
Soft Cost Contingency			10.0%	\$437,388
<b>Total Financing Costs</b>				<b>\$437,388</b>
<b>Total Costs</b>				<b>\$44,211,257</b>

**EXHIBIT E**

**Form of Completion Guaranty**

[To be attached]

## COMPLETION GUARANTY

This Completion Guaranty ("**Guaranty**"), dated as of \_\_\_\_\_, 202\_\_ is made by THE RELATED COMPANIES, L.P., a New York limited partnership ("**Guarantor**"), in favor of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"). Guarantor covenants and agrees as follows:

1. Recitals. This Guaranty is made with reference to the following recitals of facts which constitute a material part of this Guaranty:

A. The City and EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company ("**Developer**"), an affiliate of Guarantor, have heretofore entered into that certain Amended and Restated Conditional Property Exchange Agreement dated [\_\_\_\_], 2025 (the "**CPEA**"), pursuant to the terms of which, among other things, (i) City has acquired fee title to certain real property located at 447 Battery Street, San Francisco, CA (the "**Development Site**") on or about the date hereof, and (ii) Developer has agreed to construct a fire station (the "**Fire Station Project**") upon the Development Site, which Fire Station Project is to be developed in accordance with (x) the terms and conditions of that certain Construction Management Agreement of even date herewith (the "**CMA**"), by and between the City and the Developer concurrently herewith, and (y) the terms and conditions of the CPEA.

B. Guarantor is an entity separate and distinct from Developer. Guarantor is receiving consideration from the City for executing this Guaranty, in that the City has entered into the CPEA, and, concurrently herewith, will be entering into the CMA.

C. City would not have entered into the CPEA or the CMA without having received this Guaranty executed by Guarantor as an inducement.

D. All capitalized terms not defined herein shall have the meanings ascribed to them in the CMA.

2. Guaranty. For valuable consideration, Guarantor absolutely, irrevocably, and unconditionally guarantees, to and for the benefit of City, the full, timely, and complete payment and performance of all of the Guaranteed Obligations. As used herein, the term "**Guaranteed Obligations**" shall mean (i) the obligations of Developer under the CMA, including the performance of the Developer Services, and (ii) the payment of the Fire Station Project Costs for which Developer has responsibility under the CMA (which does not include any City-Approved Additional Project Costs), excluding (A) the aggregate amount of such Fire Station Project Costs that have been paid or satisfied, including pursuant to payments made by or on behalf of Developer or Guarantor, and (B) any amounts paid by the Developer to the City under the CPEA arising out of the exercise by the City of any of its remedies under Section 10.6(b)(i) of the CPEA, other than any enforcement costs to which the City may be entitled under Section 10 of the CPEA. In no event shall Guarantor's liability for the payment or performance of its obligations hereunder exceed the Fire Station Project Costs as may be reduced pursuant to the foregoing setence .

3. Default under CMA. If there is an "event of default" (as defined in the CMA) by Developer under the CMA relating to the Guaranteed Obligations, City may proceed against either Guarantor or

Developer, or both, or City may enforce against Guarantor or Developer any rights that City has under the CMA relating to the Guaranteed Obligations (to the extent applicable), in equity or under applicable law.

4. Amendment or Assignment. This Guaranty shall not be affected or limited in any manner by (a) any assignment of, or any modification or amendment (by agreement, course of conduct, or otherwise) to, all or any portion of any agreement, instrument, and/or document with respect to or that evidences the Guaranteed Obligations, or (b) the modification, at any time, of any of the Guaranteed Obligations. By this Guaranty, Guarantor hereby guarantees payment and performance of the Guaranteed Obligations as so amended, assigned, or modified whether or not such amendment, assignment, or modification is with the consent of or notice to Guarantor.

5. Remedies. If Guarantor defaults with respect to any of the Guaranteed Obligations, and if Guarantor does not satisfy such Guaranteed Obligations within thirty (30) days of its receipt of written notice of such default from City, City may, at its election, proceed immediately to enforce the payment and performance of the Guaranteed Obligations against the Guarantor, any other guarantor, or Developer (to the extent of any rights City has against Developer relating thereto), or any combination of Developer, Guarantor, and/or any other guarantor. If there be more than one party acting as Guarantor hereunder, the obligations hereunder imposed shall be the joint and several obligations of such parties. In the event of any default under this Guaranty, an action or actions may be brought and prosecuted against the Guarantor, whether or not Developer or any other guarantor is joined in such action(s) or a separate action or actions are brought against Developer or any other guarantor. City may maintain successive actions for separate defaults. Unless and until the Guaranteed Obligations have been fully satisfied or waived in writing by City, the Guarantor shall not be released from its obligations under this Guaranty irrespective of (i) the exercise by City of any of City's rights or remedies (including, without limitation, compromise or adjustment of the Guaranteed Obligations or any part thereof), (ii) any release by City of Developer or any other guarantor, (iii) any such action or any number of successive actions, or (iv) the satisfaction by Guarantor of any liability under this Guaranty incident to a particular default.

6. Waivers. Guarantor hereby represents and warrants (which representation and warranty is being relied upon by City in connection with its entering into the CMA and accepting this Guaranty) that each of the waivers set forth in this Guaranty is made with Guarantor's full knowledge of its significance and consequences after discussion with Guarantor's own competent legal counsel, which counsel has made Guarantor aware of the relevant circumstances and likely consequences of each such waiver and has explained to Guarantor the true legal effect of each such waiver including Guarantor's rights which Guarantor would have if it were not making such waivers. Based on the foregoing, Guarantor acknowledges that, under the circumstances, such waivers are reasonable, and Guarantor hereby waives or agrees to (as the case may be) the following, in each case to the extent permitted by applicable law:

A. Guarantor waives all rights it would otherwise have to require City, as a condition to City's exercise of any of its rights under this Guaranty, to (i) proceed against Developer or any other party or guarantor, (ii) perfect, retain, protect, proceed against, or exhaust any security that City holds or may hold from Developer, or (iii) pursue any other remedy in City's power. The foregoing waiver includes, without limitation, a waiver of all of Guarantor's rights under California Civil Code Sections 2845 and 2849 or similar laws;

B. Guarantor waives the benefit of all statutes of limitations affecting Guarantor's liability under this Guaranty to the extent permitted by law;

C. Guarantor waives all defenses which Guarantor might otherwise have to its obligations under this Guaranty by reason of any disability of Developer or any other person(s), including, without limitation, the incapacity, lack of authority, death, or disability of Developer or any other person(s) or the failure of City to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Developer or any other person(s). The foregoing waiver includes, without limitation, a waiver of all of Guarantor's rights under California Civil Code Section 2810 and similar laws;

D. Guarantor waives all defenses which Guarantor might otherwise have to its obligations under this Guaranty under Civil Code Section 2809 or any other any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal;

E. Guarantor waives all defenses and rights which Guarantor might otherwise have to exoneration under this Guaranty, including, without limitation, all rights under California Civil Code Section 2819 and similar laws, based upon any alteration, modification, compromise, renewal, extension, or assignment of the CMA or any of the Guaranteed Obligations, whether done with or without the knowledge and/or consent of Guarantor and Guarantor hereby grants City the right to take any such action relative to the Guaranteed Obligations, following delivery of written notice to Guarantor without in any manner affecting the liability of Guarantor under this Guaranty.

F. Guarantor waives the right to claim or assert any defense of Developer to the Guaranteed Obligations including, without limitation, any defense based upon failure of consideration, accord and satisfaction, impossibility of performance, or mistake;

G. Guarantor waives all other defenses based on the impairment of any other collateral or security for the Guaranteed Obligations;

H. Guarantor waives all defenses it may otherwise have against City based upon an election of remedies by City;

I. Regardless of whether or not Guarantor makes payments to City, until the Guaranteed Obligations have been satisfied and paid in full, Guarantor acknowledges that all rights of subrogation, contribution, and reimbursement which it may otherwise have against Developer in the event Guarantor suffers any liability under this Guaranty, including, without limitation, any rights under California Civil Code Sections 2847, 2848, and 2849 or similar laws, shall be subordinated to City's rights hereunder;

J. Guarantor waives all its rights to determine how, when, and what application of payments and credits shall be made on the Guaranteed Obligations;

K. Guarantor subordinates to City all of Guarantor's rights to participate in any security now or later held by City;

L. Guarantor waives all its rights to receive notice from City of any default by Developer;

M. Guarantor waives all defenses against City by reason of any action City may take or omit to take under the provisions of this Guaranty, except in the event of City's gross negligence or willful misconduct;

N. Guarantor waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of non-payment, and all other notices of any kind (except for notices to which Guarantor is expressly entitled under the terms of this Guaranty), including without limitation all notices of the existence, creation, or incurring of new or additional obligations and any notice of acceptance of this Guaranty, which, upon execution by Guarantor, shall immediately be binding upon Guarantor;

O. Guarantor waives all duties City may have to investigate the authority of any representative, or purported representative, of Developer to incur any obligation or enter into any agreement on behalf of Developer;

P. Guarantor waives all rights it may otherwise attain by reason of City's failure to enforce, or delay in enforcing, any of City's rights with respect to the Guaranteed Obligations; and

Q. Guarantor waives all duties City may have to disclose to the Guarantor any facts City may now or in the future know about Developer, regardless of whether City has reason to believe that any such facts materially increase the risk beyond that which the Guarantor intends to assume or has reason to believe that such facts are unknown to the Guarantor or has a reasonable opportunity to communicate such facts to the Guarantor.

Without limiting the foregoing, Guarantor hereby expressly waives any and all benefits Guarantor may otherwise maintain under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433 and similar laws. Guarantor acknowledges that the waiver of the benefits of the above cited statutory provisions has the effect of eliminating certain rights and protections which Guarantor would otherwise have including, without limitation, certain rights to require City to act in a particular manner as a condition to enforcing its rights against Guarantor under this Guaranty, certain rights to exoneration upon a modification of the Guaranteed Obligations, and certain rights to require the City to pursue other remedies available to it prior to pursuing Guarantor.

7. Rights Cumulative. All rights, powers and remedies of City under this Guaranty shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to City by law. This Guaranty is in addition to and exclusive of the guaranty of any other guarantor of the Guaranteed Obligations.

8. Representations and Warranties. Guarantor hereby represents and warrants that the following are true and accurate as of the date of this Guaranty and shall be true at all times in the future while this Guaranty is outstanding: (i) Guarantor has sufficient net worth and sufficient liquidity of assets to enable Guarantor to promptly perform all of the Guaranteed Obligations as and when they are due; (ii) as of the date of the execution of this Guaranty by Guarantor, there is no action or proceeding pending or, to Guarantor's knowledge after due inquiry, threatened against Guarantor before any court or administrative agency which could adversely affect Guarantor's financial condition in a way which would jeopardize in any material respect Guarantor's ability to satisfy its obligations under this Guaranty; (iii) City has made no representation to Guarantor as to the creditworthiness or financial condition of Developer; (iv) Guarantor is duly authorized to execute and deliver this Guaranty; (v) that the terms and provisions of this Guaranty are intended to be valid and enforceable in accordance with its terms, except as limited by

bankruptcy, insolvency, or other laws of general application relating to the enforcement of creditors' rights; (vi) that the signatories to this Guaranty are duly authorized to bind Guarantor and execute this Guaranty on Guarantor's behalf; and (vii) Guarantor has carefully read and negotiated all provisions of this Guaranty and has consulted with competent legal counsel in connection therewith. The foregoing representations and warranties shall survive the execution and delivery of this Guaranty and are expressly made for the benefit and reliance of City and its successors and assigns.

9. Covenant of Diligence. Guarantor covenants that it is intimately aware of Developer's business and financial condition and that it has conducted such investigation as it deems necessary of the factors that it deems material to the execution and delivery of the CMA and this Guaranty. Furthermore, Guarantor represents that it has the resources, access, and opportunity to remain informed at all times of the financial status of Developer and of all other material information relative to the CMA and Guarantor's obligations under this Guaranty; and Guarantor covenants to remain informed relative to all such matters as long as this Guaranty remains in effect. On the basis of the foregoing, Guarantor hereby waives any obligation which City might otherwise have as a condition to enforcing Guarantor's obligations under this Guaranty, to keep Guarantor informed relative to any information regarding the CMA, the Developer, and any other factors affecting the obligations of Developer or Guarantor.

10. Attorneys' Fees and Costs. The prevailing party in any bankruptcy, insolvency or other proceeding ("**Proceeding**") relating to the enforcement or interpretation of this Guaranty may recover from the unsuccessful party all costs, expenses, and actual attorneys' fees (including expert witness and other consultants' fees and costs) relating to or arising out of (a) the Proceeding (whether or not the Proceeding proceeds to judgment), and (b) any post-judgment or post-award proceeding including, without limitation, one to enforce or collect any judgment or award resulting from the Proceeding. All such judgments and awards shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, and actual attorneys' fees.

11. Further Assurances. Each party to this Guaranty shall execute and deliver all instruments and documents and take all actions as may be reasonably required or appropriate to carry out the purposes of this Guaranty; provided that, no such instrument or document shall increase such party's obligations or liabilities, or decrease such party's rights, in each case other than to a de minimis extent.

12. Governing Law and Venue. This Guaranty shall be governed by and construed in accordance with the laws of the State of California without giving effect to the choice of law provisions thereof. Any Proceeding shall be initiated in San Francisco County, California, and the parties irrevocably consent to the jurisdiction of the courts in San Francisco County, California. Each party authorizes and accepts service of process sufficient for personal jurisdiction in any Proceeding against it as contemplated by this Guaranty, to its address for the giving of notices set forth in this Guaranty.

13. Modification. This Guaranty may be modified only by a contract in writing executed by both City and Guarantor.

14. Headings. The paragraph headings in this Guaranty: (a) are included only for convenience, (b) do not in any manner modify or limit any of the provisions of this Guaranty, and (c) may not be used in the interpretation of this Guaranty.



15. Prior Understandings. This Guaranty and all documents specifically referred to and executed in connection with this Guaranty: (a) contain the entire and final Guaranty of the parties to this Guaranty with respect to the subject matter of this Guaranty, and (b) supersede all negotiations, stipulations, understandings, agreements, representations and warranties, if any, with respect to such subject matter, which precede or accompany the execution of this Guaranty.

16. Interpretation. Whenever the context so requires in this Guaranty, all words used in the singular may include the plural (and vice versa) and the word “**person**” includes a natural person, a corporation, a firm, a partnership, a joint venture, a trust, an estate or any other entity. The terms “**includes**” and “**including**” do not imply any limitation. For purposes of this Guaranty, the term “**day**” means any calendar day and the term “**business day**” means any calendar day other than a Saturday, Sunday or any other day designated as a holiday under California law. Any act permitted or required to be performed under this Guaranty upon a particular day which is not a business day may be performed on the next business day with the same effect as if it had been performed upon the day appointed. No remedy or election under this Guaranty is exclusive, but rather, to the extent permitted by applicable law, each such remedy and election is cumulative with all other remedies at law or in equity.

17. Partial Invalidity. Each provision of this Guaranty is valid and enforceable to the fullest extent permitted by law. If any provision of this Guaranty (or the application of such provision to any person or circumstance) is or becomes invalid or unenforceable, the remainder of this Guaranty, and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, are not affected by such invalidity or unenforceability.

18. Binding Effect. This Guaranty shall inure to the benefit of and be binding on the successors and assigns of City and Guarantor.

19. Notices. Any notice required or permitted to be given hereunder and any approval by the parties shall be in writing and shall be (as elected by the party giving such notice or granting such approval): (i) personally delivered, (ii) delivered by recognized overnight courier, (iii) transmitted by postage prepaid certified mail, return receipt requested, or, (iv) by electronic mail with a hard copy sent by one of the other methods described in clauses (i) – (iii) of this Section. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given on the earlier to occur of: (i) the date of receipt if delivered personally; (ii) on the next business day if sent by overnight courier; (iii) five (5) days after the date of posting if transmitted by mail; or (iv) the date of transmission with confirmed answerback if transmitted by electronic mail. Either party referenced herein may change its address for purposes hereof by notice given to the other. Notwithstanding the foregoing to the contrary, any notice of default must be sent by registered mail. Notices, requests and approvals hereunder shall be directed as follows:

the City:	Real Estate Division
	The City and County of San Francisco
	25 Van Ness Avenue, Suite 400
	San Francisco, CA 94102
	Re: Fire Station 13/447 Battery Completion Guaranty
	Telephone No. (415) 554-9860
	Email Address: <a href="mailto:RealEstateAdmin@sfgov.org">RealEstateAdmin@sfgov.org</a>

with copy to: Office of the City Attorney  
The City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Re: Fire Station 13/447 Battery Completion Guaranty  
Telephone No. (415) 554-4711  
Email Address: carol.r.wong@sfcityatty.org

Guarantor: The Related Companies, L.P.<sup>1</sup>  
30 Hudson Yards, 72<sup>nd</sup> Floor  
New York, New York 10001  
Attention: Richard O'Toole  
Email Address: rotoole@related.com

with a copies to: EQX JACKSON SQ HOLDCO LLC  
44 Montgomery Street, Suite 1300  
San Francisco, CA 94104  
Attention: Gino Canori  
Telephone No.: (415) 677-9000  
Email Address: gcanori@related.com

and

Goodwin Procter LLP  
525 Market Street  
San Francisco, CA 94105  
Attention: Dustin Calkins, Esq.  
Email Address: DCalkins@goodwinlaw.com

20. Waiver. Any waiver of a default or provision under this Guaranty must be in writing. No such waiver constitutes a waiver of any other default or provision concerning the same or any other provision of this Guaranty. No delay or omission by a party in the exercise of any of its rights or remedies constitutes a waiver of (or otherwise impairs) such right or remedy. A consent to or approval of an act does not waive or render unnecessary the consent to or approval of any other or subsequent act.

21. Time is of the Essence. Time is of the essence with respect to each provision of this Guaranty.

22. Drafting Ambiguities. Each party to this Guaranty and its legal counsel have reviewed and revised this Guaranty. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Guaranty or of any amendments or exhibits to this Guaranty.

23. Intentionally Omitted.

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<sup>1</sup> Related to confirm notice parties for purposes of this Guaranty.

24. Release of Guaranty. This Guaranty shall automatically terminate and shall be of no further force or effect upon [City's issuance of the Certificate of Completion pursuant to the CMA]<sup>2</sup>, which termination of this Guaranty shall, upon written request by Guarantor, be confirmed by City in writing within ten (10) business days following Guarantor's written request for confirmation of such termination; provided that, failure by City to provide such confirmation shall not be construed to limit or impair the automatic termination set forth in this Section 24.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty on the day and year first above written.

**Guarantor:**

THE RELATED COMPANIES, L.P.,  
a New York limited partnership

By: THE RELATED REALTY GROUP, INC.,  
a Delaware corporation,  
its general partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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<sup>2</sup> Bracketed for conforming to final defined term usage in CMA.

**EXHIBIT F-1**

**Form of Existing City Property Deed**

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

MAIL TAX STATEMENTS TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

(Space above this line reserved for Recorder's use only)

Documentary Transfer Tax of \$\_\_\_\_\_ based upon full market value of the property without deduction for any lien or encumbrance

**QUITCLAIM DEED**

(Assessor's Parcel No. \_\_\_\_, Block \_\_\_\_)  
530 Sansome Street

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), pursuant to Ordinance No. \_\_\_\_\_, adopted by the Board of Supervisors on \_\_\_\_\_, 20\_\_, and approved by the Mayor on \_\_\_\_\_, 20\_\_, hereby grants to EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company, any and all right, title and interest City may have in and to (a) the real property (the "Property") located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof, and (b) all improvements located on the Property and fixtures affixed thereto, and all privileges, easements, tenements and appurtenances thereon or in any way appertaining to the Property.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
[NAME]  
Director of Property

**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 in and for said State, 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 \_\_\_\_\_ (Seal)

EXHIBIT A

Legal Description of the Property

**EXHIBIT F-2**

**Form of 447 Battery Property Deed**

[Modified copy of Exhibit H of Option Agreement Without Exception (g) to be Attached]

**EXHIBIT G**

**Accepted Developer Conditions of Title**

1. The herein described property lies within the boundaries of a Mello-Roos Community Facilities District (CFD) as follows:

CFD No: 90-1

For: San Francisco Unified School District  
School Facility Repair and Maintenance

Disclosed by: Notice of Special Tax Lien

Recording Date: July 05, 1990

Recording No.: 573343, in Reel F160, Image 1044, Official Records

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City of San Francisco, County of San Francisco. The tax may not be prepaid.

And amended: September 20, 2010 as Document No. 2010-J052321-00, in Reel J232, Image 0698, Official Records

2. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the Developer or as a result of changes in ownership or new construction following the Closing.

3. Water rights, claims or title to water, whether or not disclosed by the public records.

4. Matters as shown on that certain map/plat, entitled MAP SHOWING THE WIDENING OF WASHINGTON STREET FROM BATTERY ST. TO SANSOME ST.

Recording Date: September 11, 1974

Recording No: Book "W" of Maps, Page 27

5. Rights of the public in and to that portion of the herein described property as shown on the Map/Plat: MAP SHOWING THE WIDENING OF WASHINGTON STREET FROM BATTERY ST. TO SANSOME ST.

Recording Date: September 11, 1974

Recording No: Book "W" of Maps, Page 27

Street/Road: Washington Street

Affects: PARCEL



**EXHIBIT H**

**Accepted City Conditions of Title**

1. The herein described property lies within the boundaries of a Mello-Roos Community Facilities District (CFD) as follows:

CFD No: Community Facilities District No. 90-1  
For: School facility repair and maintenance  
Disclosed by: Notice of Special Tax Lien of Community Facilities District No. 90-1 of the San Francisco Unified School District  
Recording Date: July 5, 1990  
Recording No.: 90-573343, Book F160, Page 1044 of Official Records  
  
And amended: September 20, 2010 as document no. 2010-J052321, in Book K232, Page 0698 of Official Records

2. The herein described property lies within the boundaries of the Downtown Community Benefit District (CBD), as disclosed by Resolution recorded May 31, 2019, Document No. 2019-K777018 of Official Records, and as disclosed by Assessment Map, filed in Book 1, Page 139, recorded May 31, 2019, as Instrument No. 2019-776730 of Official Records.

3. Water rights, claims or title to water, whether or not disclosed by the public records.

4. Matters contained in that certain document entitled: Agreement Permitting Encroachment

Dated: May 16, 1967  
Executed by: Joseph I. Alioto, Stephanie Alioto Pinoni, Angelina Alioto Figara, Frances Alioto Ostrow, Kahn and Kaufman, a partnership  
Recording Date: June 6, 1967  
Recording No: P64998, Book B149, Page 379, of Official Records

**Exhibit I**

**List of Material Developer Documents in Developer's Possession**

1. Phase I Environmental Site Assessment – 447 Battery Street (Project #731790101), by Langan CA, Inc., dated June 17, 2024, for Related California
2. Preliminary Geotechnical Investigation - 530 Sansome Street , 425 and 439-445 Washington Street and 447 Battery Street (Project #731728601), by Langan CA, Inc., dated June 21, 2024, for Related California
3. Zoning and Requirements Survey - 447 Battery Street (PZR Site Number 172585-1), by the Planning and Zoning Resource Company, dated June 21, 2024
4. ALTA Survey – 447 Battery Street, by Martin M. Ron Associated, dated July 22, 2024, for Related California Residential, LLC

**Exhibit J**

**City's General Disclosures**

1. The Existing City Parcel is subject to San Francisco Health Code Article 22A
2. The Existing City Parcel is subject to the requirements of San Francisco Health Code Article 38
3. Remedial Action Completion Certification for LOP Site No. 10177 dated October 30, 1998, with Case Closure Form for LOP Site No. 10177 dated October 20, 1997, and supporting materials by Clayton Environmental Consultants, Inc., EJM Contractors Inc. (Project No. 7088E), Delta Environmental Laboratories (Ref. Nos. R2500400, R2510400, R2510wet, R2758400, R2758, R3079400w, and R3079
4. Environmental Site Characterization – 530 Sansome Street (Project #731728601), by Langan Engineering and Environmental Services, Inc. dated June 14, 2019, for Related California

**Exhibit K**

**Form of Closing Certificate to be Delivered by Developer at Closing**

DEVELOPER CLOSING CERTIFICATE

( \_\_\_\_\_, 202\_)

Pursuant to the terms and conditions of that certain AMENDED AND RESTATED CONDITIONAL PROPERTY EXCHANGE AGREEMENT (530 Sansome Street and 447 Battery Street, San Francisco) dated as of \_\_\_\_\_, 2025 (the "Agreement"), by and between the City and County of San Francisco ("City"), and EQX Jackson SQ Holdco LLC, a Delaware limited liability company ("Developer"), Developer hereby certifies to City that, except as set forth in Schedule 1 attached hereto, all of Developer's representations and warranties contained in Section 8.1 and Section 12.2 of the Agreement are true and correct in all material respects as of the Closing (as defined in the Agreement), subject to all terms and conditions set forth in the Agreement, including, without limitation, the provisions of Section 15.5 of the Agreement.

DEVELOPER:

EQX JACKSON SQ HOLDCO LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule 1  
Disclosures

**EXHIBIT L**

**Form of Closing Certificate to be Delivered by City at Closing**

CITY CLOSING CERTIFICATE

( \_\_\_\_\_, 202\_)

Pursuant to the terms and conditions of that certain AMENDED AND RESTATED CONDITIONAL PROPERTY EXCHANGE AGREEMENT (530 Sansome Street and 447 Battery Street, San Francisco) dated \_\_\_\_\_, 2025 (the "Agreement"), by and between the City and County of San Francisco ("City"), and EQX Jackson SQ Holdco LLC, a Delaware limited liability company ("Developer"), City hereby certifies to Developer that, except as set forth in Schedule 1 attached hereto, all of City's representations and warranties contained in Section 8.1 and Section 12.3 of the Agreement are true and correct in all material respects as of the Closing (as defined in the Agreement), subject to all terms and conditions set forth in the Agreement, including, without limitation, the provisions of Section 15.5 of the Agreement.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Sarah. R. Oerth  
Director of Property

Date: \_\_\_\_\_

Schedule 1  
Disclosures

**EXHIBIT M**

**Form of FIRPTA Affidavit**

**CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform \_\_\_\_\_, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by \_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_  
("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's office address is \_\_\_\_\_

\_\_\_\_\_  
Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated: \_\_\_\_\_, 20\_\_\_\_.

On behalf of:

\_\_\_\_\_,  
[NAME]  
a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]  
Its: \_\_\_\_\_



**EXHIBIT N**

**Developer's General Disclosures**

1. All matters disclosed in the Developer Documents referenced in Exhibit I to this Agreement.

**EXHIBIT O**

**Form of Memorandum of Amended and Restated Conditional Property Exchange Agreement (530 Sansome Street and 447 Battery Street, San Francisco)**

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)

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(Space above this line reserved for Recorder's use only)

**MEMORANDUM OF AMENDED AND RESTATED  
CONDITIONAL PROPERTY EXCHANGE AGREEMENT  
(530 Sansome Street and 447 Battery Street, San Francisco)**

THIS MEMORANDUM OF AMENDED AND RESTATED CONDITIONAL PROPERTY EXCHANGE AGREEMENT (530 Sansome Street and 447 Battery Street, San Francisco) (this "Memorandum of Agreement"), dated as of \_\_\_\_\_, 202\_, is by and between EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company ("Developer"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

1. Related California Residential, LLC, a Delaware limited liability company that is wholly controlled by Developer's sole member ("Developer's Affiliate"), and Battery Street Holdings LLC, a California limited liability company ("447 Battery Owner"), are parties to that certain Option and Purchase Agreement for Real Property and Escrow Instructions dated as of May 7, 2024, as amended by that certain First Amendment to Option and Purchase Agreement for Real Property and Escrow Instructions dated as of May 31, 2024 (as amended, the "447 Battery Purchase Agreement"), pursuant to which Developer's Affiliate has the option to purchase that certain improved real at 447 Battery Street (Lot 2, Block 0206), as more particularly described in Exhibit A attached to and incorporated by this reference in this Memorandum of Agreement (the "447 Battery Property"). Developer's Affiliate has agreed to cause the 447 Battery Owner to transfer title to the City at the request of Developer.

2. City owns certain real property located in the City and County of San Francisco, California, commonly known as 530 Sansome Street (Lot 17, Block 0206) and more particularly described in Exhibit B attached to and incorporated by this reference in this Memorandum of Agreement (the "City Real Property").

3. Developer and City have entered into that certain unrecorded Amended and Restated Conditional Property Exchange Agreement (530 Sansome Street and 447 Battery Street, San Francisco) dated as of \_\_\_\_\_, 2025 (the "Agreement"), incorporated by this reference into this Memorandum of Agreement, pursuant to which City agreed to transfer fee title to the City Real Property to Developer in exchange for having Developer cause the 447 Battery

Property to be conveyed to the City. The Agreement amends and replaces the Conditional Property Exchange Agreement between Developer and City and dated as of July 30, 2020, as amended by a First Amendment to Conditional Property Exchange Agreement, dated as of July 27, 2022, and a Second Amendment to Conditional Property Exchange Agreement dated as of March 27, 2023 (as amended, the “Original CPEA”).

4. The purpose of this Memorandum of Agreement is to give notice of the Agreement and the respective rights and obligations of the parties thereunder, and all of the terms and conditions of the Agreement are incorporated herein by reference as if they were fully set forth herein, and to memorialize the termination of the Memorandum of Agreement between City and Developer and dated as of July 30, 2020, and recorded in the Official Records of San Francisco County as Document No. 202000389 on August 11, 2020.

5. This Memorandum of Agreement shall not be deemed to modify, alter or amend in any way the provisions of the Agreement. In the event any conflict exists between the terms of the Agreement and this instrument, the terms of the Agreement shall govern and determine for all purposes the relationship between Developer and City and their respective rights and duties.

6. This Memorandum of Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement as of the date first written above.

DEVELOPER:

EQX JACKSON SQ HOLDCO LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Sarah R. Oerth  
Director of Property

Date: \_\_\_\_\_

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                    )  
  ) ss  
County of San Francisco         )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, 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 \_\_\_\_\_ (Seal)

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                     )  
   ) ss  
County of San Francisco             )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, 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 \_\_\_\_\_ (Seal)

## EXHIBIT P

### Form of Assignment of Conditional Property Exchange Agreement

THIS COLLATERAL ASSIGNMENT OF CONDITIONAL PROPERTY EXCHANGE AGREEMENT (this "Assignment") is made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company ("Borrower"), to \_\_\_\_\_, a \_\_\_\_\_ ("Lender"), and consented and agreed to by THE CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county ("City").

#### RECITALS:

A. Lender has made a loan to Borrower in the maximum principal amount of up to \_\_\_\_\_ AND \_\_\_/100 DOLLARS (\$\_\_\_\_\_.) (the "Loan"), which is secured by a \_\_\_\_\_ given by Borrower in favor of \_\_\_\_\_ a \_\_\_\_\_ (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, the "Security Instrument") establishing a first priority lien on certain real property more particularly described on Exhibit A attached hereto (the "Property") to secure the payment and performance of the promissory note and other documents evidencing the Loan (the "Loan Documents"), which Security Instrument was recorded in the official records of the City and County of San Francisco on \_\_\_\_\_, 20\_\_ as Instrument No. \_\_\_\_\_.<sup>3</sup>

B. Borrower and City are parties to that certain Amended and Restated Conditional Property Exchange Agreement dated as of \_\_\_\_\_ (the "Exchange Agreement") (a true and correct copy of such Exchange Agreement is attached hereto as Exhibit B) pursuant to which, among other things, the City would exchange of the 530 Sansome Property (as defined in the Exchange Agreement) for the 447 Battery Property (as defined in the Exchange Agreement) and Developer would construct the New Fire Station (as defined in the Exchange Agreement) on the terms and conditions of the Exchange Agreement.

C. Lender requires, as a condition to providing financing to Borrower for the development of the Project (as defined in the Exchange Agreement), that Borrower collaterally assign the Exchange Agreement and that Borrower and City agree to the terms, conditions and covenants set forth below.

#### AGREEMENT

For good and valuable consideration the parties hereto agree as follows:

1. Assignment of Exchange Agreement. As additional collateral security for the Loan, Borrower hereby conditionally transfers, sets over and assigns to Lender all of Borrower's right, title and interest in and to the Exchange Agreement, said transfer and assignment to automatically become a present, unconditional assignment, at Lender's option, upon the occurrence and during the continuance of an Event of Default by Borrower under the Security Instrument or any of the other Loan Documents.

2. Subordination. Subject to the terms of this Assignment, the Exchange Agreement and any and all liens, rights and interests (whether choate or inchoate) owed, claimed or held by City in and to the Property are and shall be in all respects subordinate and inferior to the Security Instrument and all other liens and security interests in the Property created, or to be created, for

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<sup>3</sup> NTD: To be updated as necessary to reflect details of Loan Documents.

the benefit of Lender, and securing the repayment of the Loan and the performance of the obligations under the Loan Documents, and all renewals, extensions, increases, supplements, amendments, modifications or replacements thereof.

3. Termination. At such time as the Loan is paid in full and the Security Instrument is released or assigned of record, this Assignment and all of Lender's right, title and interest hereunder with respect to the Exchange Agreement shall automatically terminate without any further action on part of Lender or any other party.

4. Estoppel. City represents and warrants that as of the date hereof, (a) the Exchange Agreement is in full force and effect as to City and has not been modified, amended or assigned by City or describing any such modifications, amendments, or assignments, (b) neither City nor, to City's actual knowledge without duty of inquiry, Borrower is in default under any of the terms, covenants or provisions of the Exchange Agreement, and (c) City has not commenced any action or given or received any notice from Borrower for the purpose of terminating the Exchange Agreement.

5. Lender's Right to Cure. Notwithstanding anything to the contrary in the Exchange Agreement or this Assignment, before exercising any remedy against Borrower for an event of default under the Exchange Agreement:

A. CITY SHALL PROVIDE LENDER WITH WRITTEN NOTICE OF THE BREACH OR DEFAULT BY BORROWER GIVING RISE TO SAME (THE "DEFAULT NOTICE") AND, THEREAFTER, THE OPPORTUNITY TO CURE SUCH BREACH OR DEFAULT AS PROVIDED FOR BELOW.

B. AS SET FORTH IN SECTION 15.12(D) OF THE EXCHANGE AGREEMENT, AFTER LENDER RECEIVES A DEFAULT NOTICE, LENDER SHALL HAVE THE RIGHT, AT ITS OPTION, TO COMMENCE WITHIN THE SAME PERIOD AS BORROWER UNDER THE EXCHANGE AGREEMENT TO REMEDY OR CAUSE TO BE REMEDIED THE DEFAULT THAT IS THE SUBJECT OF SUCH NOTICE, PLUS AN ADDITIONAL PERIOD OF (A) SIXTY (60) DAYS TO CURE A MONETARY DEFAULT, AND (B) ONE HUNDRED TWENTY (120) DAYS TO CURE A NON-MONETARY DEFAULT WHICH IS SUSCEPTIBLE OF CURE BY LENDER WITHOUT OBTAINING TITLE TO THE APPLICABLE PROPERTY. IN ADDITION, AS TO ANY BREACH OR DEFAULT BY BORROWER THE CURE OF WHICH REQUIRES POSSESSION OR CONTROL OF THE PROPERTY, THE CITY SHALL REFRAIN FROM EXERCISING ANY OF ITS REMEDIES WITH RESPECT TO THE DEFAULT WITHIN THE LENDER'S APPLICABLE CURE PERIOD IF (1) THE LENDER NOTIFIES THE CITY THAT IT INTENDS TO PROCEED WITH DUE DILIGENCE TO FORECLOSE ON THE SECURITY INTEREST OR OTHERWISE OBTAIN TITLE TO THE PROPERTY, (2) THE LENDER COMMENCES FORECLOSURE PROCEEDINGS WITHIN SIXTY (60) DAYS OF GIVING SUCH NOTICE AND THEREAFTER DILIGENTLY PURSUES SUCH FORECLOSURE TO COMPLETION, AND (3) AFTER OBTAINING TITLE, THE LENDER DILIGENTLY PROCEEDS TO CURE THOSE EVENTS OF DEFAULT: (A) WHICH ARE REQUIRED TO BE CURED BY THE LENDER AND ARE SUSCEPTIBLE OF CURE BY THE LENDER, AND (B) OF WHICH THE LENDER HAS BEEN GIVEN NOTICE BY CITY. ANY SUCH BREACH OR DEFAULT THAT IS PERSONAL TO BORROWER (E.G., A BANKRUPTCY EVENT WITH RESPECT TO BORROWER) SHALL BE DEEMED CURED AS TO LENDER'S ASSUMED OBLIGATIONS UNDER THE EXCHANGE AGREEMENT UPON LENDER'S OBTAINING POSSESSION OR CONTROL OF THE PROPERTY; PROVIDED, HOWEVER, THAT CITY SHALL STILL HAVE THE RIGHT TO BRING A SEPARATE CLAIM AGAINST BORROWER AS TO SUCH PERSONAL BREACH OR DEFAULT.

6. Recognition of Qualifying Successor Developer; Release of Borrower.

A. UPON A QUALIFYING SUCCESSOR DEVELOPER (AS DEFINED BELOW) TAKING TITLE TO THE PROPERTY FOLLOWING A FORECLOSURE EVENT (AS DEFINED BELOW), (A) AT SUCH QUALIFYING SUCCESSOR DEVELOPER'S ELECTION, WHICH SHALL BE MADE IN WRITING TO CITY WITHIN THIRTY (30) DAYS OF TAKING TITLE, (I) CITY SHALL RECOGNIZE SUCH QUALIFYING SUCCESSOR DEVELOPER AS THE "DEVELOPER" UNDER THE EXCHANGE AGREEMENT AS AFFECTED BY THIS ASSIGNMENT; (II) THE EXCHANGE AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT AS A DIRECT AGREEMENT, IN ACCORDANCE WITH ITS TERMS (EXCEPT AS PROVIDED IN THIS ASSIGNMENT), BETWEEN SUCH QUALIFYING SUCCESSOR DEVELOPER AND CITY; (III) TO THE EXTENT THEY EXIST AT SUCH TIME OF TAKING TITLE, SUCH QUALIFYING SUCCESSOR DEVELOPER SHALL BE DEEMED TO HAVE AUTOMATICALLY ASSUMED ALL OF BORROWER'S RIGHTS, INTERESTS, AND OBLIGATIONS UNDER THE CONSTRUCTION MANAGEMENT AGREEMENT (AS DEFINED IN THE EXCHANGE AGREEMENT) AND, SUBJECT TO ANY CONSENT RIGHTS OF THE COUNTERPARTY THERETO, THE FINAL CONSTRUCTION CONTRACT (AS DEFINED IN THE EXCHANGE AGREEMENT), THE ARCHITECT CONTRACT (AS DEFINED IN THE EXCHANGE AGREEMENT), AND ANY OTHER PROJECT CONTRACT (AS DEFINED IN THE EXCHANGE AGREEMENT); AND (IV) SUCH QUALIFYING SUCCESSOR DEVELOPER SHALL BE BOUND TO CITY UNDER ALL THE TERMS AND CONDITIONS OF THE EXCHANGE AGREEMENT AND THE CONSTRUCTION MANAGEMENT AGREEMENT (TO THE EXTENT IT EXISTS AT THE TIME OF A FORECLOSURE EVENT), EXCEPT AS PROVIDED IN THIS ASSIGNMENT OR IN THE CONSTRUCTION MANAGEMENT AGREEMENT (TO THE EXTENT IT EXISTS AT THE TIME OF A FORECLOSURE EVENT), AND (B) THE BORROWER SHALL BE AUTOMATICALLY RELEASED FROM ITS OBLIGATIONS UNDER THE EXCHANGE AGREEMENT AS OF THE DATE OF SUCH ASSUMPTION BY THE QUALIFYING SUCCESSOR DEVELOPER, AND UPON BORROWER'S WRITTEN REQUEST, THE CITY SHALL PROMPTLY CONFIRM THE SAME IN WRITING. THE PROVISIONS OF THIS SECTION 6(A) SHALL BE EFFECTIVE AND SELF-OPERATIVE WITHOUT ANY NEED FOR A QUALIFYING SUCCESSOR DEVELOPER OR CITY TO EXECUTE ANY FURTHER DOCUMENTS (OTHER THAN NOTICE TO CITY OF QUALIFYING SUCCESSOR DEVELOPER'S ELECTION). CITY SHALL, HOWEVER, CONFIRM THE PROVISIONS OF THIS SECTION 6(A) IN WRITING UPON REQUEST BY ANY QUALIFYING SUCCESSOR DEVELOPER WITHIN TEN (10) BUSINESS DAYS OF SUCH REQUEST.

B. IF THE QUALIFYING SUCCESSOR DEVELOPER TAKING TITLE TO THE PROPERTY AND ASSUMING BORROWER'S RIGHTS, INTERESTS, AND OBLIGATIONS UNDER THE EXCHANGE AGREEMENT FOLLOWING A FORECLOSURE EVENT IS LENDER (OR ITS ASSIGNEE OR NOMINEE), THEN THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS SHALL APPLY NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE EXCHANGE AGREEMENT TO THE CONTRARY:

i. If the Closing has not yet occurred, Qualifying Successor Developer shall have the right to notify City in writing that it elects not to construct the Fire Station Project, in which event each and every deadline imposed upon "Developer" under the Exchange Agreement shall be deemed tolled until the earlier to occur of (A) the fifteen (15) month anniversary of City's receipt of such notification from Qualifying Successor Developer and (B) such Qualifying Successor Developer's transfer of the Property to another party;

ii. If the Closing has occurred, Qualifying Successor Developer shall have the right to notify City in writing that it elects not to construct the Fire Station Project, in which event



each and every deadline imposed upon “Developer” under the Exchange Agreement shall be deemed tolled until the earlier to occur of (A) the six (6) month anniversary of the later of (x) City’s receipt of such notification from Qualifying Successor Developer and (y) City’s granting to Qualifying Successor Developer all rights and privileges of “Developer” under the Exchange Agreement and the other agreement contemplated thereby and (B) such Qualifying Successor Developer’s transfer of the Property to another party; and

iii. City shall not withhold its consent to an assignment of the Exchange Agreement by Qualifying Successor Developer to any successor owner of the Property that satisfies the Successor Developer Requirement, and upon consummation of any such assignment of the Exchange Agreement, that assigning Qualifying Successor Developer shall be immediately and automatically released in full from any and all obligations under the Exchange Agreement.

C. THE FOLLOWING TERMS HAVE THE FOLLOWING DEFINITIONS:

i. “Foreclosure Event” means: (A) foreclosure under the Security Instrument; (B) any other exercise by Lender of rights and remedies (whether under the Security Instrument or under applicable law, including bankruptcy law) as holder of the Loan and/or the Security Instrument, as a result of which Lender or any other person becomes owner of the Property; or (C) delivery by Borrower to Lender (or its designee or nominee) of a deed or other conveyance of Borrower’s interest in the Property in lieu of any of the foregoing.

ii. “Qualifying Successor Developer” means (A) [\_\_\_\_\_] <sup>4</sup>; (B) any winning bidder at a foreclosure sale with respect to the Property that satisfies the Successor Developer Requirement; or (C) any transferee of [\_\_\_\_\_] that is approved by City, such approval not to be unreasonably withheld, conditioned or delayed if such transferee satisfies the Successor Developer Requirement.

iii. “Successor Developer Requirement” means, with respect to a successor owner of the Property, that as of the date such owner acquires title to the Property, (i) such owner having (A) experience completing an essential services building on a build to suit basis for a governmental agency in an urban setting, (Bi) experience developing and operating complex urban mixed use projects involving a luxury hotel similar in scope to the Tower, (C) a minimum net worth of \$300,000,000 and minimum liquidity of \$75,000,000, and (ii) other relevant factors, as reasonably determined by City, including the transferee’s ability to cause the 447 Battery Property to be transferred to City as provided for in this Agreement, the transferee’s assumption of Developer’s rights and obligations under the Construction Management Agreement and the Development Agreement, and transferee’s means and experience to promptly perform the Developer’s obligations under this Agreement and the Construction Management Agreement all such that the City would retain the benefit of its bargain under the Exchange Agreement and the Construction Management Agreement. Any approved assignee shall assume all of Developer’s obligations under this Agreement pursuant to an assignment and assumption agreement reasonably acceptable to the City.

7. Protection of Qualifying Successor Developer. Notwithstanding anything to the contrary in the Exchange Agreement, no Qualifying Successor Developer or other successor owner of the Property shall be liable for or bound by any of the following matters:

A. ANY CLAIM CITY MAY HAVE AGAINST BORROWER RELATING TO ANY EVENT OR OCCURRENCE BEFORE THE CONSUMMATION OF THE

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<sup>4</sup> NTD: Add any entity that City, Borrower, and Lender agree is a pre-approved Qualifying Successor Developer or delete if none]

FORECLOSURE EVENT, INCLUDING ANY CLAIM FOR INDEMNIFICATION AND/OR DAMAGES OF ANY KIND WHATSOEVER AS THE RESULT OF ANY BREACH BY BORROWER THAT OCCURRED BEFORE THE CONSUMMATION OF THE FORECLOSURE EVENT. THE FOREGOING SHALL NOT LIMIT CITY'S RIGHT TO EXERCISE AGAINST QUALIFYING SUCCESSOR DEVELOPER ANY CLAIM OTHERWISE AVAILABLE TO CITY BECAUSE OF (I) EVENTS OCCURRING AFTER THE CONSUMMATION OF THE FORECLOSURE EVENT OR (II) ANY EVENT THAT OCCURS BEFORE THE CONSUMMATION OF THE FORECLOSURE EVENT TO THE EXTENT IT CONTINUES AFTER SUCH CONSUMMATION AND IS SUSCEPTIBLE TO CURE BY QUALIFYING SUCCESSOR DEVELOPER.

B. ANY MODIFICATION OR AMENDMENT OF THE EXCHANGE AGREEMENT, OR ANY WAIVER OF THE TERMS OF THE EXCHANGE AGREEMENT, MADE WITHOUT LENDER'S PRIOR WRITTEN CONSENT.

C. ANY CONSENSUAL OR NEGOTIATED SURRENDER, CANCELLATION, OR TERMINATION OF THE EXCHANGE AGREEMENT, IN WHOLE OR IN PART, AGREED UPON BETWEEN BORROWER AND CITY WITHOUT LENDER'S WRITTEN CONSENT, UNLESS EFFECTED UNILATERALLY BY CITY PURSUANT TO THE EXPRESS TERMS OF THE EXCHANGE AGREEMENT.

8. Agreement by Borrower. Borrower agrees that it shall not execute and/or deliver the Construction Management Agreement (as defined in the Exchange Agreement) without the written consent of Lender.

9. Consent and Agreement by City. City hereby acknowledges and consents to this Assignment. City agrees that it will act in conformity with the provisions of this Assignment and Lender's rights hereunder. Further, City hereby agrees not to contest or intentionally impede the proper exercise by Lender of any right it has under or in connection with this Assignment.

10. Further Assurances. City further agrees to (a) execute such affidavits and certificates as Lender shall reasonably require to further City's representations or obligations under this Assignment, and (b) on request from Lender, furnish Lender with copies of such information as Borrower is entitled to receive under the Exchange Agreement to the extent Borrower fails to timely deliver it to Lender following Lender's written request to Borrower.

11. Exculpation. Notwithstanding anything to the contrary in this Assignment or the Exchange Agreement, (a) Lender shall have no liability under the Exchange Agreement unless and until Lender (or its designee or nominee) assumes the obligations under the Exchange Agreement as a Qualified Successor Developer and (b) in such case, Lender's (or its designee's or nominee's, as applicable) obligations and liability under the Exchange Agreement shall never extend beyond Lender's (or its designee's or nominee's, as applicable) interest in the Property from time to time (collectively, the "Lender's Interest"). City shall look exclusively to Lender's Interest for payment or discharge of any obligations of Lender (or its designee or nominee, as applicable) under the Exchange Agreement. If City obtains any money judgment against Lender (or its designee or nominee, as applicable) with respect to the Exchange Agreement or the relationship between Lender (or its designee or nominee, as applicable) and City, then City shall look solely to Lender's Interest to collect such judgment. City shall not collect or attempt to collect any such judgment out of any other assets of Lender (or its designee or nominee, as applicable).

12. Governing Law. This Assignment shall be governed by California law.

13. Notices. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if (a) hand delivered or (b) sent by

certified or registered United States mail, postage prepaid, return receipt requested or (c) sent by expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery (with a copy of any notice delivered by the methods described in clause (b) or clause (c) to be sent by electronic mail), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 13):

If to Lender:	[_____]
with a copy to:	[_____]
If to Borrower:	EQX Jackson SW Holdco LLC c/o The Related Companies, L.P. 60 Columbus Circle New York, NY 10023 Attention: David Zussman Email: david.zussman@related.com
With a copy to:	The Related Companies, L.P. 44 Montgomery San Francisco, CA 94104 Attention: Matthew Witte Email: matthew.witte@related.com
With a copy to:	The Related Companies, L.P. 44 Montgomery San Francisco, CA 94104 Attention: Gino Canori Email: gcanori@related.com
With a copy to:	J. Abrams Law, P.C. 538 Hayes Street San Francisco, California 94102 Attention: Jim Abrams Email: jabrams@jabramslaw.com
If to City:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property Re: 530 Sansome Property Exchange Facsimile No.: (415) 552-9216
With a copy to:	Carol Wong Deputy City Attorney Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Re: 530 Sansome Property Exchange Facsimile No.: (415) 554-4757

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day.

14. No Oral Change. This Assignment may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower, Lender or City, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

15. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Borrower, City and Lender and their respective successors and assigns forever. Lender shall not assign or transfer its rights under this Assignment in connection with any assignment of the Loan and the Loan Documents without the prior written consent of City, not to be unreasonably withheld, conditioned or delayed[; provided, City's consent shall not be required in connection with a transfer to \_\_\_\_\_].<sup>5</sup> Neither Borrower nor City shall have the right to assign or transfer its rights or obligations under this Assignment without the prior written consent of Lender, and any attempted assignment without such consent shall be null and void.

16. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

17. Headings and Captions. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. Duplicate Originals, Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

[NO FURTHER TEXT ON THIS PAGE]

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<sup>5</sup> NTD: Add any pre-approved Qualifying Successor Developer.

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date and year first written above.

BORROWER:

EQX JACKSON SQ HOLDCO LLC,  
a Delaware limited liability company

By:  
Name:  
Title:

CITY:  
CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Sarah R. Oerth  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Carol Wong  
Deputy City Attorney

EXHIBIT A TO COLLATERAL ASSIGNMENT OF  
CONDITIONAL PROPERTY EXCHANGE AGREEMENT

Legal Description of Land

PARCEL ONE:

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND WHICH IS SITUATED AS AFORESAID, AND WHICH IS BOUNDED BY A LINE COMMENCING AT A POINT IN THE SOUTHERLY LINE OF WASHINGTON STREET (AS EXISTED PRIOR TO THE WIDENING THEREOF), DISTANT THEREON 90 FEET AND 3-1/2 INCHES EASTERLY FROM THE POINT OF INTERSECTION OF SAID LINE OF WASHINGTON STREET WITH THE EASTERLY LINE OF SANSOME STREET; RUNNING THENCE EASTERLY ON AND ALONG SAID SOUTHERLY LINE OF WASHINGTON STREET 47 FEET 5-1/2 INCHES; THENCE SOUTHERLY 122 FEET, MORE OR LESS, AND TO A POINT IN THE NORTHERLY LINE OF MERCHANT STREET WHICH IS DISTANT THEREON 137 FEET 9-1/2 INCHES EASTERLY FROM THE POINT OF INTERSECTION OF SAID LINE OF MERCHANT STREET WITH THE EASTERLY LINE OF SANSOME STREET; THENCE WESTERLY, ON AND ALONG SAID LINE OF MERCHANT STREET, 47 FEET AND 6-3/8 INCHES; AND THENCE NORTHERLY 122 FEET TO THE SAID SOUTHERLY LINE OF WASHINGTON STREET AND SAID POINT OF COMMENCEMENT. THE SAME BEING A PORTION OF BEACH AND WATER LOTS NUMBERS 133, 134 AND 135, AS THE SAME ARE NUMBERED, DELINEATED AND SHOWN ON THE OFFICIAL MAP OF SAID CITY AND COUNTY OF SAN FRANCISCO.

EXCEPTING THEREFROM SUCH PORTION OF THE SAME AS IS DESCRIBED IN THAT CERTAIN GRANT DEED TO THE CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, DATED MAY 14, 1967 AND RECORDED AUGUST 9, 1967 IN BOOK B167, OF OFFICIAL RECORDS, PAGES 723 AND 724.

APN: LOT 013, BLOCK 0206

PARCEL TWO:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 137 FEET AND 9 INCHES EASTERLY FROM THE EASTERLY LINE OF SANSOME STREET; RUNNING THENCE EASTERLY ALONG SAID LINE OF WASHINGTON STREET 40 FEET AND 6 INCHES, MORE OR LESS, TO A POINT ON THE SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 97 FEET WESTERLY FROM THE WESTERLY LINE OF BATTERY STREET; THENCE AT A RIGHT ANGLE SOUTHERLY 122 FEET TO THE NORTHERLY LINE OF MERCHANT STREET; THENCE WESTERLY ALONG SAID LINE OF MERCHANT STREET 40 FEET AND 6 INCHES, MORE OR LESS, TO A POINT ON THE SAID LINE OF MERCHANT STREET, DISTANT THEREON 137 FEET AND 9-1/2 INCHES EASTERLY FROM THE EASTERLY LINE OF SANSOME STREET; RUNNING THENCE NORTHERLY 122 FEET TO THE SOUTHERLY LINE OF WASHINGTON STREET AND THE POINT OF BEGINNING.

BEING PART OF 50 VARA BLOCK NO. 35

EXCEPTING THEREFROM, THAT PORTION OF SAID LAND CONVEYED TO THE CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, BY DEED RECORDED MAY 26, 1967, IN BOOK B146, PAGE 875 OF OFFICIAL RECORDS, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 137.750 FEET EASTERLY FROM THE EASTERLY LINE OF SANSOME STREET, AND THENCE RUNNING EASTERLY ALONG SAID LINE OF WASHINGTON STREET 40.50 FEET, MORE OR LESS, TO A POINT ON SAID SOUTHERLY LINE OF WASHINGTON STREET, DISTANT THEREON 97 FEET WESTERLY FROM THE WESTERLY LINE OF BATTERY STREET; THENCE AT A RIGHT ANGLE SOUTHERLY 23 FEET; THENCE AT A RIGHT ANGLE WESTERLY 40.50 FEET, MORE OR LESS, TO A LINE DRAWN FROM THE POINT OF BEGINNING TO A POINT ON THE NORTHERLY LINE OF MERCHANT STREET, DISTANT THEREON 137.792 FEET EASTERLY FROM THE EASTERLY LINE OF SANSOME STREET; THENCE RUNNING NORTHERLY ALONG SAID LINE SO DRAWN 23 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING A PORTION OF 50 VARA BLOCK NO. 35.

APN: LOT 014, BLOCK 0206

EXHIBIT B TO COLLATERAL ASSIGNMENT OF  
CONDITIONAL PROPERTY EXCHANGE AGREEMENT

(see attached)



**SCHEDULE 1**

**Form Construction Contract**

CONSTRUCTION MANAGEMENT AGREEMENT

(Cost-Plus with GMP Option)

BY AND BETWEEN

EQX JACKSON SQ HOLDCO LLC  
(OWNER/DEVELOPER)

AND

[TBD]  
(CONSTRUCTION MANAGER)

FOR THE FOLLOWING PROJECT:

Fire Station 13 Project at 447 Battery Street  
San Francisco, CA 94111

DATED: \_\_\_\_\_

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EXHIBIT A - LIST OF CONSTRUCTION DOCUMENTS

EXHIBIT B - FORM OF TRADE CONTRACT APPROVAL LETTER

EXHIBIT C - GENERAL CONDITIONS WORK ITEMS

EXHIBIT D - INSURANCE REQUIREMENTS

EXHIBIT E - OMITTED

EXHIBIT F - PRELIMINARY SCHEDULE

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EXHIBIT H - PARTIAL WAIVER AND RELEASE FORM

EXHIBIT I - FINAL WAIVER AND RELEASE FORM

EXHIBIT J - ALLOWANCE LOG

EXHIBIT K – ALTERNATE LOG

EXHIBIT L – SUMMARY OF BUDGET

EXHIBIT M – QUALIFICATIONS

EXHIBIT N – EIR MITIGATION MEASURES

EXHIBIT O – CITY WORKFORCE AGREEMENT

## CONSTRUCTION MANAGEMENT AGREEMENT

AGREEMENT, by and between EQX JACKSON SQ HOLDCO, LLC, having an address of 44 Montgomery Street, Suite 1300, San Francisco, CA, 94104 (“Owner/Developer”), and [TBD], of [ADDRESS], (“Construction Manager”).

### WITNESSETH:

WHEREAS, Owner/Developer has received San Francisco Planning Department approval to develop and construct a four-story San Francisco Fire Department Station No. 13 at 447 Battery Street in San Francisco (the “Project”) for the City and County of San Francisco (the “City”). The Project is part of a larger approximately 375,000 sq.ft. mixed-use development on the 17,733 sq.ft. (0.41 acre) site at 530 Sansome Street and 425-445 Washington Street in San Francisco, California (APN Nos. 0206-013, 0206-014, and 0206-017), which will include an approximately 41-Story, 544 ft. tall mixed-use (office, hotel and retail) tower building, which has also been approved by the San Francisco Planning Department;

WHEREAS, Construction Manager has been advised that, under separate agreement, Owner/Developer has retained the services of Skidmore, Owings & Merrill and such other architects, engineers and consultants as deemed necessary by Owner (collectively, “Architect”), to prepare plans, specifications, working drawings and other construction documents for the Project (the “Construction Documents”);

WHEREAS, Construction Manager understands that (a) Owner/Developer may obtain construction financing for the Project through lenders (institutional or otherwise) or other sources (collectively “Lender”); and (b) as a condition to the procurement of such financing, Lender’s review and approval of this Agreement, as well as the design and construction of the Project, may be required;

WHEREAS, Construction Manager understands that the City’s review and approval of this Agreement, as well as the design and construction of the Project, will be required;

WHEREAS, Construction Manager has been advised that, pursuant to this Agreement, Owner/Developer intends to retain the services of Construction Manager (a) to consult with Owner/Developer, Architect and Consultants (as defined in Article XVII hereof) in the preparation of the Construction Documents; and (b) to perform construction related services and arrange for, monitor, supervise, administer and contract for the construction of all or any portion of the Project (collectively the “Work”), all as more particularly set forth in Article II hereof; and

WHEREAS, Construction Manager desires to be retained by Owner/Developer to perform, or cause to be performed, the Work;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Construction Manager and Owner/Developer hereby agree as follows.

## ARTICLE I

### **Contract Documents**

**1.01** The contract documents (collectively, the “Contract Documents”) shall consist of the following:

(a) This Agreement, including all the Exhibits annexed hereto and made a part hereof, and all duly executed amendments (including Change Orders and Emergency Change Orders, as such terms are defined in Article XXII hereof) and modifications (in both cases with attachments) issued after execution of this Agreement;

(b) The Construction Documents identified in **Exhibit A** hereto, and such other Construction Documents as may hereafter be approved in writing by Owner/Developer;

(c) The City of San Francisco General Conditions referenced in Exhibit A.

(d) The Progress Schedule (as defined in Section 7.01(k) hereof) to be initially prepared for the Work by Construction Manager and submitted to Owner/Developer for its approval in accordance with the provisions of Section 7.01(k) for the construction and Substantial Completion and Final Completion (as such terms are defined in Section 6.01 hereof) of the Work, as the same may be updated, modified or extended, subject to Owner/Developer’s prior approval, in accordance with the applicable provisions of this Agreement. A copy of the preliminary schedule, as of the date of this Agreement, is attached hereto as **Exhibit F**; and

(e) The Trade Contractor Approval Letter set forth in **Exhibit B** (the “Trade Contractor Approval Letter”), annexed hereto and made a part hereof, or such other form of approval letter as Owner/Developer may use to evidence its approval of the award of written trade contracts for items of the Work to be performed and/or materials, supplies and equipment to be furnished in connection with the Project to trade contractors, materialmen, and suppliers (collectively, the “Trade Contractors”).

The Contract Documents form the contract between Owner/Developer and Construction Manager. References in the Contract Documents to “the contract” or “this contract” shall be deemed to include all of the Contract Documents. References to “this Agreement” or “the Agreement” shall refer to this instrument, which is one of the Contract Documents. In resolving any conflicts among the Contract Documents, the above listed order of priority shall control, with item (a) having the overriding priority, except to the extent subsequently altered by a Change Order or modification; and within each category, the newer Contract Documents shall be given precedence.

**1.02** The intent of the Contract Documents is to include in the Work all labor, materials and supplies, insurance, tools, equipment, all permits (excluding building permits which shall be paid for by Developer), licenses, taxes, fees, tariffs, approvals, transportation, testing and field surveying (customarily furnished by general contractors) and other services and items required in connection with the satisfactory performance, execution and Final Completion of the Work in accordance with the Contract Documents. Matters not expressly included in the Contract Documents but which are reasonably inferable therefrom

shall be deemed included as a part of the Work. An item of work shall be deemed reasonably inferable, if it is a required component of a specific assembly and necessary for the proper execution and completion of the Work.

**1.03** The Contract Documents are complementary and cumulative and what is called for by one shall be as binding as if called for by all.

**1.04** Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.05** If any conflicts or ambiguities exist in or between the Construction Documents, the Construction Documents and any of the Contract Documents, or the Construction Documents and existing conditions at the Project Site, Construction Manager shall, immediately upon discovery of such conflict or ambiguity, bring the same to the attention of Owner/Developer, in writing, for resolution. It is expressly understood and agreed that Owner/Developer, in consultation with Architect, shall be the interpreter of the Construction Documents and shall resolve any such conflicts and ambiguities. The Construction Manager and the relevant Trade Contractor shall be required to provide the better or more inclusive of the conflict or ambiguity as directed by Owner/Developer. Any Work relating to any such conflict or ambiguity which is performed by Construction Manager's own forces or any Trade Contractor after discovery by Construction Manager but before Owner/Developer has had a reasonable time to respond to or address such condition, as provided herein, shall be at Construction Manager's or such Trade Contractor's sole risk, cost and expense. Construction Manager shall not be responsible for code compliance of the drawings and specifications prepared by the Architect and its design team unless, pursuant to the standard of care identified in Section 2.04 below, it knew or should have known of such error/omission based on its review of the Contract Documents and failed to notify Owner/Developer, subject to Section 29.01.

**1.06** Modifications to parts of the Contract Documents are for the purpose of varying, modifying, rescinding or adding to the Contract Documents. All modifications should be read together with the portions of the Contract Documents to which they relate.

**1.07** The drawings and specifications and all other documents comprising the Construction Documents are complementary. Anything shown in any of the drawings and not mentioned in the specifications, or mentioned in any of the specifications and not shown in the drawings, shall have the same effect as if shown or mentioned in both.

**1.08** A typical or representative detail indicated on the Construction Documents shall constitute the standard for workmanship and materials throughout corresponding parts of the Work, unless otherwise shown.

**1.09** The layout of mechanical, plumbing, fire protection, and electrical systems, equipment, fixtures, piping, ductwork, conduits, specialty items and accessories indicated on the Construction Documents is diagrammatic. The actual scope of the Work shall be carried out at no additional costs and so as not to affect the architectural and structural integrity and limitations of the Project and shall be performed in such sequence and manner so as to avoid conflicts and provide clear access to all control

points, including valves, strainers, control devices and specialty items of every nature related to such systems and equipment in conformance with all applicable codes. Subject to the provisions of Section 29.01 hereof, if Construction Manager discovers or has knowledge of (a) conflicts in the Construction Documents, or (b) any conflicts between existing conditions at the Site (which Construction Manager is aware of or by testing as agreed to by Owner/Developer) and the Construction Documents which, in Construction Manager's opinion, are of a nature that may affect the architectural or structural integrity or limitations of the Project, Construction Manager immediately shall bring the same to the attention of Owner/Developer, in writing, for resolution in the manner provided in Section 1.06 hereof. Any Work relating to any such conflict which is performed by Construction Manager or by any Trade Contractor after discovery but prior to the resolution of the same shall be borne by the responsible party in accordance with Section 1.05. The Architect is responsible for coordination of the Drawings, Plans and Specifications and for final coordination of the design work of the Construction Manager's design/build and design/assist Specifications, if any. Notwithstanding, design/build and design/assist Trade Contractors shall assist with Architect's coordination efforts through issuance of 100% Construction Development drawings, and Construction Manager shall provide BIM clash analysis and solutions, which shall be subject to Architect's final approval.

## **ARTICLE II**

### **Scope of the Work**

**2.01** Construction Manager shall perform all construction management services described in this Agreement in connection with the construction of the Work. The general scope of the Work, as initially reflected in the Construction Documents, will be developed into a detailed design and construction program and further refined as the preparation of the Construction Documents progresses so as to include, and further define, (a) the scope, parameters and anticipated timing for the Work, and (b) Owner/Developer's and Construction Manager's understanding of the quality of the materials and workmanship required and expected. Construction Manager represents that (a) it has fully acquainted itself with the general design concept and scope of the Work, as reflected in the Construction Documents, (b) it has visited the Project Site and existing buildings, if any, including the location of adjacent structures and utilities, and is familiar with access to the Project Site and with the observable condition of any existing buildings. Owner/Developer shall be responsible for obtaining all consents, licenses and easements required from adjoining property Owners. Notwithstanding anything to the contrary stated herein, Construction Manager has not, and will not, perform any subsurface investigations. Construction Manager has reviewed data of subsurface conditions provided to Construction Manager by Owner/Developer, which Construction Manager shall be entitled to rely upon in good faith. Construction Manager shall not be responsible for any subsurface conditions that differ materially from those identified in the data provided to the Construction Manager by Owner/Developer, except for those known to the Construction Manager or any Trade Contractor or ordinarily found to exist and generally recognized as inherent in the construction activities of the character provided in the Contract Documents.

**2.02** In addition to the services referred to in Section 2.01 hereof, Construction Manager shall perform and furnish, or cause to be performed and furnished all labor, materials, plant, power, light, heat, water, telephone, tools, supplies, equipment, services, transportation, scaffolding, permits (excluding



building permits which shall be paid for by Owner/Developer), licenses, supervision and shall perform or cause to be performed all of the General Conditions Work Items identified in **Exhibit C** annexed hereto and made a part hereof (“General Conditions Work Items”) and shall provide all services, business administration and supervision, necessary for, or incidental to, the successful prosecution and Final Completion of the Work in the most expeditious and economical manner, consistent with best industry accepted standards, strict and complete compliance with codes and ordinances having jurisdiction over performance of the Work, lawful construction practices and the interests of Owner/Developer relating to quality, timely, economical completion of the Work, to the extent made known to Construction Manager. The Work shall be performed and executed in a customary and workmanlike manner by qualified and efficient workers, in conformance with the Contract Documents and best industry trade practices.

**2.03** Construction Manager agrees to furnish efficient business administration with emphasis on budget control, construction scheduling, coordination of the Work, supervision and construction management in an expeditious and economical manner consistent with the interests of Owner/Developer and shall assist Owner/Developer in developing and maintaining a climate of understanding and good will with all governmental and quasi-governmental agencies affected by the Project (particularly including the City with regard to the Fire Station), the local communities adjacent to the Project Site, and the public at large. Construction Manager shall require all Trade Contractors to comply with Construction Manager’s instructions related to storage of materials and scheduling. Construction Manager shall generally advise and assist Owner/Developer on all matters concerning the construction of the Project upon which Owner/Developer requests advice and assistance and also about all matters concerning which Construction Manager, being familiar with the construction industry, might normally be consulted. All recommendations to be rendered by Construction Manager shall be in writing when requested, stating advantages and disadvantages and evaluating alternatives and shall be in sufficient detail to enable Owner/Developer to analyze such recommendations and make informed decisions with respect thereto. Without limiting the foregoing, Construction Manager’s obligations are more fully described herein.

**2.04** Construction Manager accepts the relationship of trust and confidence established between it and Owner/Developer by this Agreement and covenants to Owner/Developer to furnish its best professional skill, judgment and efforts in performing its duties under this Agreement and to cooperate with Owner/Developer, Architect and Consultants in furthering the interests of Developer as made known to Construction Manager. For the purpose of this Agreement, “standard of care”, “best skill” or “best judgment” or “best efforts” shall be deemed to mean those efforts that a qualified and diligent construction manager performing work on a four-story fire station in downtown San Francisco and similar to Construction Manager would use to fulfill Owner/Developer’s objectives considering the high degree of trust and confidence Developer has placed in Construction Manager as an experienced and capable construction manager. Construction Manager understands that it is Owner/Developer’s intent to construct the Project at a reasonable cost and in the most expeditious fashion given budgetary considerations. Accordingly, Construction Manager will devote its best efforts (consistent with the Construction Budget and Progress Schedule) toward (a) maintaining the cost level of the Project at the lowest possible point consistent with good construction practices, (b) carrying out Owner/Developer’s intent and direction of Architect’s and Consultants’ Construction Documents; and (c) achieving the most rapid and efficient construction and completion of the Project. Construction Manager will use its best efforts to bring to Owner/Developer’s attention any possibilities for savings that may present themselves during the course

of Construction Manager's performance under this Agreement and will confer with Owner/Developer periodically in order to determine whether there are any areas where, by design change or otherwise, costs may be reduced. It shall be considered a material breach if Construction Manager shall knowingly accept for its own account any trade discounts, rebates, refunds, except to the extent permitted by Article IX, contributions, or deal with (or recommend that Owner/Developer deal with) any firm in which Construction Manager has any financial or other interest, or undertake any activity or employment which would or could create a conflict of interest or compromise Construction Manager's judgment or prevent Construction Manager from serving the best interests of Owner/Developer. If Construction Manager shall become aware of any facts which are or may be in violation of the preceding sentence or shall have any financial or other interest in any firm with which Owner/Developer is dealing or proposes to deal with in connection with the Project, Construction Manager shall immediately advise Owner/Developer thereof in writing. It shall be deemed a conflict of interest and a material breach of the terms of this Contract, for Construction Manager to knowingly employ at the Project, or knowingly recommend acceptance of bids from Trade Contractors employing, with respect to the Project, any relatives (including in-laws) of any of the officers or directors, or executives of Construction Manager. Any breach hereunder shall constitute an "Event of Default" and entitle Developer to terminate this Agreement for Cause in accordance with the provisions herein.

### ARTICLE III

#### **Contract Sum & Reimbursable Costs**

**3.01** As consideration for the full and complete performance of the Work and all of Construction Manager's obligations hereunder, Owner/Developer shall pay to Construction Manager a sum of money ("Contract Sum") equal to the total of:

- (a) a fee ("Construction Manager's Fee"), which includes all overhead (including home office personnel and expenses not otherwise reimbursable under Section 3.07 hereof) and profit;
- (b) general conditions costs incurred by Construction Manager ("General Conditions Costs"), as provided in Section 3.03;
- (c) Reimbursable Costs, as defined in Article IV hereof; and
- (d) Contingency, if the GMP Option is exercised.

**3.02** Construction Manager's Fee, which includes all costs not otherwise identified in this Agreement and profit, shall be equal to \_\_\_\_\_ (\_\_\_%) (the "Fee") of the total of (a) Reimbursable Costs as provided in Article IV. Construction Manager shall be entitled to a separate lump sum fee for preconstruction services as listed in Section 7.01 which services are performed prior to the Notice to Proceed ("NTP") date in the amount of \_\_\_\_\_, which shall be included in the Construction Manager's first Application for Payment.

**3.03** Construction Manager's General Conditions Costs are more fully defined in Section 3.07 below and shall be fixed in the amount of \_\_\_\_\_.

**3.04** Construction Manager shall be entitled to an extension in Contract Time and additional General Conditions Costs as defined in Article 6 below. All Change Orders shall be marked up for insurance, SDI and applicable taxes. Owner shall be entitled to receive written notice of all circumstances that cause delay within forty-eight (48) hours of the occurrence of the event causing the delay. Failure of Construction Manager to provide such notice will cause Construction Manager to forfeit its right to additional General Conditions for the delays caused by such event.

**3.05** Payments on account of Construction Manager's Fee and General Conditions Costs, shall be paid monthly, simultaneously with each progress payment made to Construction Manager under Article XI hereof. The proportion of Construction Manager's Fee and General Conditions Costs earned at the date of any Application for Payment (as such term is defined in Article XI hereof) shall be calculated as defined in Section 3.02 above for the Work completed in such Application for Payment. Construction Manager's Fee, General Conditions Costs and Reimbursable Costs shall be reimbursed as incurred by Construction Manager, subject to the provisions of Section 3.06 regarding retention on Trade Contract Costs.

**3.06** Unless otherwise agreed to by Developer and Construction Manager, Developer shall make progress payments to Construction Manager pursuant to the provisions of Article XI hereof, subject to retention on the Trade Contract Costs (including payments to Trade Contractors for the performance of General Conditions Work Items pursuant to Trade Contracts) in an amount equal to ten percent (10%) of such Trade Contract Costs. When Developer determines that the Work is ninety-eight percent (98%) or more complete, the Developer may reduce retention funds to an amount equal to two hundred percent (200%) of the estimated work value of work yet to be completed, plus any amounts necessary to cover offsets by the Developer for liquidated damages, defective Work, stop notices, forfeitures, and other charges.

**3.07** The General Conditions Costs, shall include the following:

(a) The direct wages of labor directly on Construction Manager's Field payroll. "Field" means, for purposes of this Agreement, the location of the Project Site;

(b) Salaries and benefits of Construction Manager's employees, including but not limited to project manager(s), superintendent(s), whose full-time services are required for the Work, paid for such portions of their time as may be devoted to the Work;

(c) To the extent not included in Section 3.07(a) or 3.07(b) above, payroll taxes and contributions for federal old age benefits, unemployment insurance, family leave or other employee benefits required by law, and such other applicable actual or accrued fringe benefits;

(d) Actual Costs and expenses incurred in connection with telephones (and charges), fax, messenger service, blueprinting, Xeroxing, photographs, field office, trailers, correspondence and other similar petty cash items directly related to the Work;

(e) Actual Costs of all Project Office temporary structures and their maintenance, less the reasonable salvage value obtainable on such items which are used but not totally consumed in the performance of the Work; provided, however, that at Developer's option and its direction, Construction

Manager either shall (i) deliver all such temporary structures to Developer, (ii) use reasonable efforts to sell the same for the account of Developer, or (iii) discard the same in the manner set forth in Section 6.05 hereof;

(f) Rental charges of all project office machinery and equipment (exclusive of hand tools) used at the Project Site and maintenance expenses for any temporary project office structure necessary in connection with the performance of the Work, together with costs incurred, including the installation thereof, and the dismantling, erection, removal, transportation and delivery costs thereof;

(g) Costs incurred by Construction Manager in performing General Conditions Work Items listed in Exhibit C hereof by Construction Manager's own labor force or by Trade Contractors retained by Construction Manager to perform the same;

(h) License fees necessary for the management of the Work.

**3.08** Construction Manager acknowledges that the Construction Documents identified in Exhibit A annexed hereto are incomplete and are being developed by Architect. However, Construction Manager represents that the documents identified in Exhibit A contain sufficient information so as to provide Construction Manager with an understanding of the scope of the Work and the level of finishes required for the Project.

**3.09** Owner/Developer may request that within thirty (30) calendar days after Construction Manager's receipt of eighty percent (80%) complete Construction Documents, Construction Manager shall submit to Owner/Developer a Guaranteed Maximum Price ("GMP") proposal, which shall credit Owner/developer with the fees for Pre-Construction services either earned and/or paid to date by Owner/Developer to Construction Manager (the "GMP Option").

(a) The GMP shall be the sum of: (i) all Reimbursable Costs, including all Trade Contract Costs, add-alternate and allowance items identified as such, as well as insurance, bond and SDI Program costs (if any); (ii) all revised General Conditions Costs; (iii) the Contingency, and (iv) Construction Manager's Revised Fee for providing the GMP.

(b) Within thirty (30) calendar days of receipt by Owner/Developer of the GMP, it shall be Construction Manager's and Owner/Developer's goal to have confirmed and agreed upon the GMP and executed a GMP Amendment to this Agreement (the "GMP Amendment"). If within the thirty (30) calendar-day period, Owner/Developer and Construction Manager have not confirmed and agreed upon the GMP, Owner/Developer, at its sole option, may then elect to pursue any of the following options:

(i) terminate the employment of Construction Manager for convenience as provided in Article XIV hereof; in the event of such termination, Construction Manager shall assign all Trade Contracts, if any, as directed by Owner/Developer and shall be compensated for all actual costs pursuant to Article IV below incurred to date of termination and an allocable portion of Fee;

(ii) extend the thirty (30) calendar-day period to confirm, which extension shall be for a period no greater than thirty (30) calendar-days; or

(iii) value engineer the work in concert with Construction Manager to reduce the GMP in accordance with Owner/Developer's objectives.

If the GMP Option is exercised and unless adjusted by Change Order pursuant to Article XXII below, in no event shall the Contract Sum exceed the GMP that Construction Manager submits to Owner/Developer.

**3.10** If the GMP Option is exercised and Construction Manager completes that Work for less than the GMP, then Owner/Developer shall be entitled to receive an amount equal to [REDACTED] ([REDACTED]%) percent of such savings, and Construction Manager shall be entitled to receive an amount equal to [REDACTED] ([REDACTED]%) percent of such savings.

**3.11** If the GMP Option is exercised, the GMP shall include a Contingency in the amount of [REDACTED] ([REDACTED]%) percent of the total of the Reimbursable Costs and the General Conditions Costs. The Contingency is available to cover costs that would increase Construction Manager's costs and result from (a) errors by Construction Manager in estimating time or money, (b) overruns in General Conditions Costs and guaranty work not performed or charges that are the responsibility of Trade Contractors, (c) additional costs incurred as a result of the default by Trade Contractors or items omitted by Construction Manager in the formulation of the GMP, (d) correction of minor defects, (e) time extensions to the extent not provided for by this Agreement, (f) costs to the extent the actual sum of the Trade Contract Costs exceed the line item sum of the Trade Contract Costs in the GMP, and (g) casualty losses and related expenses, not compensated by insurance or otherwise, and sustained by Construction Manager in connection with the Work. No sums may be charged to the Contingency except with prior written approval of Owner/Developer, which approval will not be unreasonably withheld. The Contingency is not intended to cover design errors, Change Order Work, overtime requested by Owner/Developer unless such overtime is caused by Construction Manager's inability or refusal to perform in accordance with the Progress Schedule as defined in Article VII below, concealed conditions or Hazardous Materials not brought onto Project Site by Construction Manager. No sums may be charged to Contingency for work for which Construction Manager is entitled to a Change Order hereunder. No sums may be charged to the Contingency for any losses or expenses for which Construction Manager would have been indemnified or compensated by insurance, but for the failure of Construction Manager to procure and maintain insurance in accordance with the requirements of this Agreement, the failure of Construction Manager to comply with the requirements of any insurance carriers providing coverage for the Project, as set forth in Exhibit D hereof, or the failure of Construction Manager to notify Owner/Developer or its insurance carrier, if applicable, of the event which results in the claim to the Contingency resulting in coverage disclaimer. No sums may be charged to the Contingency for costs which arise out of Construction Manager's intentional misconduct, gross negligence or a material breach of this Agreement. Construction Manager is not entitled to payment of sums which are otherwise properly chargeable to the Contingency to the extent (a) such sums are successfully and properly chargeable to a Trade Contractor or other responsible person or entity, or (b) such sums exceed the available Contingency set forth in the GMP. Any unused portion of the Contingency shall accrue one hundred percent (100%) to Owner/Developer.

**3.12** Unless adjusted by Change Order pursuant to Article XXII below, in no event shall the Contract Sum exceed the GMP that Construction Manager submits to Owner/Developer as set forth in Section 3.09 above.

**3.13** Unless otherwise agreed to by Owner/Developer and Construction Manager, and subject to Lender approval, Owner/Developer shall make progress payments to Construction Manager pursuant to the provisions of Article XI hereof, subject to a hold-back (“retainage”) on the Subcontract Costs (hereinafter defined) (including payments to Subcontractors for the performance of General Conditions Work Items included in such Subcontracts) in an amount equal to ten percent (10%) of each such Subcontractor Cost included in each Application for Payment. Payments of the Construction Manager’s Fee shall be subject to retainage of ten percent (10%) of each payment of the Construction Manager. Upon Substantial Completion of the Work, as defined in Article VI below, the hold-back shall be reduced to one hundred and fifty percent (150%) of the estimated value of all remaining Punch List Items. Retainage shall not be withheld from General Conditions Costs and Reimbursable Costs incurred directly by the Construction Manager, material-only subcontractors or professional service subcontractors. Retainage shall be released within thirty (30) days of satisfactory completion and acceptance of the Work by the Owner/Developer and the Architect, and receipt and acceptance of all required close-out documents specific to the individual scope for early trades. Early release of retention shall be granted on a case-by-case basis and be subject to Lender and Owner/Developer approval, which shall not be unreasonably withheld.

## **ARTICLE IV**

### **Reimbursable Costs**

**4.01** In addition to Construction Manager’s Fee and General Conditions Costs payable hereunder, Owner/Developer shall reimburse Construction Manager for the actual costs necessarily incurred by Construction Manager in the proper performance of the Work (hereinafter the “Reimbursable Costs”), which Reimbursable Costs shall be at rates not higher than those which are competitive and prevailing in the locality for work and services similar to the Work and shall be comprised of the following costs:

(a) Payments made by Construction Manager for work performed and materials, supplies and equipment furnished pursuant to Trade Contracts and/or purchase orders (and Change Orders) approved by Owner/Developer in accordance with the provisions of this Agreement (“Trade Contract Costs”);

(b) Federal, state and local sales, use, excise, personal property and other similar taxes, if any, which may be required to be paid by Construction Manager in connection with the Work exclusive of Trade Contracts, except taxes applicable, directly or indirectly, to Construction Manager’s Fee;

(c) Actual costs reasonably and necessarily incurred due to an emergency, not compensated by insurance, affecting the safety of persons or property, except to the extent caused by Construction Manager’s negligence or Construction Manager’s failure to comply with the terms of this Agreement. As a condition precedent to payment for such costs Construction Manager must give written notice to Owner/Developer within forty-eight (48) hours after incurring such costs;

(d) Premiums for insurance Construction Manager is required to obtain and maintain, if any, as set forth in **Exhibit D** annexed hereto, which shall be paid monthly at a rate equal to one and one-third percent (1.33%) of the sum of the General Conditions Costs, Execution of Work Costs, General Requirement Costs and Trade Contract Costs minus Preconstruction; and

(e) Premiums for all payment and performance bonds, or the Subcontractor Default Insurance Program, if any, required to be carried by Construction Manager. Should a Subcontractor Default Insurance Program be implemented, premiums associated with that program shall not be charged to Developer for Trade Contractors which are a subsidiary or entity of Construction Manager, however third-tier or applicable vendors under such agreements would apply to the insurance premium and reimbursed.

**4.02** Construction Manager shall use its best efforts to minimize the Reimbursable Costs incurred in the performance of the Work, consistent with the intent and purpose of this Agreement, sound business practice and the reasonable instructions of Developer. Owner/Developer and Construction Manager will develop a mutually agreeable process for review and approval of costs that Construction Manager considers to be reasonable and necessary to perform the Work in a safe and efficient manner before proceeding with such Work.

## **ARTICLE V**

### **Non-Reimbursable Costs**

**5.01** Except to the extent included in **Exhibit C**, or Article IV, Owner/Developer shall not reimburse Construction Manager for any of the following costs, all of which shall be borne by Construction Manager at its sole cost and expense:

(a) salaries or other compensation of any executives, principals, branch office heads, and any other offsite employees of Construction Manager;

(b) expenses of operating Construction Manager's home and branch offices, including overhead and administrative expenses;

(c) any part of Construction Manager's capital expenses, including interest on capital employed in connection with the Work;

(d) costs not reimbursed by insurance, due to (i) the negligent acts or omissions or willful misconduct of Construction Manager or any Trade Contractor, (ii) Construction Manager or Trade Contractor's failure to perform its obligations under this Agreement or (iii) the violation by Construction Manager or Trade Contractor of any federal, state or local laws, ordinances or statutes;

(e) casualty losses and related expenses sustained by Construction Manager in connection with tools, equipment, supplies and other personal effects owned or rented by Construction Manager;

(f) other costs which would have been insured but for the failure of Construction Manager to carry the insurance required to be carried hereunder or the failure of Construction Manager to comply with the requirements of any insurance carriers providing insurance coverage for the Project, as set forth in **Exhibit D** hereof;

(g) costs of uncovering, correcting or replacing defective or non-conforming Work by Trade Contractors.

(h) losses, costs, and expenses (including attorneys' fees and disbursements) incurred by Construction Manager in connection with, or as a result of, the occurrence of any event expressly provided for under the terms of this Agreement wherein Construction Manager agrees to indemnify and hold harmless Developer against such losses, costs and expenses;

(i) General Conditions Costs which are or which may be back-charged to or deducted from any Trade Contractor for any reason;

(j) costs incurred by reason of Construction Manager's failure to comply with its obligations under this Agreement, including costs in the form of penalties, fines or other similar charges (subject to Section 3.07(h)), as well as any and all costs incurred in contravention of laws, rules and regulations attributable to Construction Manager's negligence;

(k) except as otherwise provided in Section 4.01 hereof, premiums for other insurance carried by Construction Manager;

(l) costs of any item expressly excluded from, or not expressly included within, the items referred to in Section 3.07, **Exhibit C** or Section 4.01 hereof; and

(m) costs of any item or expense which this Agreement provides are to be paid or borne by Construction Manager at its sole cost and expense.

## ARTICLE VI

### **Schedule of the Work and Early Occupancy**

**6.01** Construction Manager shall promptly and diligently perform its responsibilities hereunder so that the Work shall be (a) substantially completed on or before \_\_\_\_\_ Calendar Days subject to adjustment as hereinafter provided (the "Substantial Completion Date"), and (b) finally completed on or before the date which is \_\_\_\_\_ calendar days from Substantial Completion (the "Final Completion Date").

(a) The Work shall be deemed substantially completed ("Substantial Completion") on the date when: (i) Architect certifies that the Project is substantially complete; (ii) the Project is sufficiently complete in accordance with Contract Documents and applicable laws so Owner/Developer can use the Project without interference for all of its intended purposes, with only minor Punch List items (as such terms is defined in Section 7.02 hereof) incomplete; and (iii) a Temporary Certificate of Occupancy



("TCO") has been issued by the appropriate local governmental authority for the entire Project, unless a delay to TCO is outside of Construction Manager's control.

(b) The Work shall be deemed finally completed ("Final Completion") on the date when the Work is fully and satisfactorily completed and conveyed to Owner/Developer for closing, and Owner/Developer shall have received satisfactory evidence, that:

(i) all Work, including all items set forth on the Punch Lists (as defined in Section 7.02), has been fully and satisfactorily completed in a good and workmanlike manner, in conformance with the Contract Documents and in full compliance with all applicable laws, rules, requirements and regulations of all governmental authorities having jurisdiction over the Work, provided, however, that if the Work does not comply with aforesaid laws, rules, requirements and regulations by reason of the fact that the Construction Documents do not so comply and Construction Manager had no actual knowledge of such non-compliance, nothing herein shall be deemed to shift any liability on account of such non-compliance from Architect to Construction Manager, unless Construction Manager knew of or should have known of such non-compliance and failed to promptly notify Owner/Developer subject to Section 29.01. To the extent that Construction Manager fails to so perform Punch List work, Owner/Developer, in addition to any other right it may have, shall have the right to arrange for the performance of such work by other forces and pay all costs thereof from retention, and if inadequate, to deduct all costs from the GMP, to the extent applicable and available, or to charge Construction Manager therewith;

(ii) all final certificates of approval relating to the Work, including a final Certificate of Occupancy ("CO") for the entire Work and the contemplated uses of the Project, including, without limitation, all necessary certifications of any entity having jurisdiction thereof or any successor thereto, shall have been issued and delivered to Owner/Developer, unless the failure to obtain such approvals is not due to any fault of Construction Manager, its Trade Contractors or anyone for whose acts they may be liable; it being expressly understood that the making of final payment by Owner/Developer to Construction Manager hereunder shall be conditional upon the deliverance by Construction Manager of the foregoing to Owner/Developer unless the failure to obtain any of the above is due to causes beyond the reasonable control of Construction Manager;

(iii) all required receipts, releases of liens, stop payment notices or payment bond rights, affidavits, waivers, guarantees, warranties, bonds, as-built drawings and any other documents required under this Agreement and/or the Trade Contracts shall have been issued and delivered to Owner/Developer; and

(iv) all Trade Contracts shall have been closed out by Construction Manager and all Trade Contractor close-out packages shall have been delivered to Owner/Developer and approved as complete by Developer.

**6.02** Anything contained in the foregoing provisions of this Article VI to the contrary notwithstanding, if and to the extent that there are hindrances to, or delays in, the performance of the Work by reason of Contemplated Delays (as such term is defined herein) and if Construction Manager

demonstrates that the Work is actually hindered or delayed thereby, the Substantial Completion Date or the Final Completion Date, as the case may be, shall be postponed by the actual number of days attributable to each such demonstrated cause. For purposes of this Agreement, "Contemplated Delays" (a) shall be deemed to include delays or hindrances not the fault of the Construction Manager caused by (i) industry-wide strikes, (ii) fire, (iii) acts of the public enemy, (iv) unavailability of, or inability to obtain, labor or materials by reason of industry-wide shortages which affect the supply or availability of labor or materials, (v) floods, (vi) rebellions, riots, insurrections or sabotage, (vii) industry-wide labor disputes provided such disputes are beyond Construction Manager's control and provided Construction Manager takes all responsible steps to remediate them, (viii) severe weather conditions, (ix) unknown concealed conditions, (x) Hazardous Materials not previously disclosed to Construction Manager, or (xi) suspensions, stoppages, and/or interruptions pursuant to Section 14.03; and (b) shall be recognized only if Construction Manager has used its best efforts to minimize the period of delay or hindrance by means which include, without limitation, seeking alternate sources of labor or materials or acceleration of Work, but such efforts shall not require Construction Manager to incur any additional costs. If Construction Manager wishes to make claim for an extension of the Substantial Completion Date or the Final Completion Date by reason of a Contemplated Delay, Construction Manager shall give notice (in accordance with the provisions of Section 29.07 hereof) to Developer of such claim within three (3) working days after knowledge of occurrence of any Contemplated Delay, with full back-up provided fifteen (15) calendar days thereafter, which notice shall set forth in detail the nature of each Contemplated Delay, the date or dates upon which each cause of delay began (and ended), the number of days of delay attributable to each cause, and the action taken, or to be taken, by Construction Manager to minimize the period of delay if possible. Construction Manager and Trade Contractors will be entitled to an extension of time and may submit for additional compensation. Any such extension of time and increase in cost shall be deemed accepted by Developer only if reflected in a validly issued Change Order. Construction Manager's Trade Contractors shall not be entitled to any additional compensation for Contemplated Delays, and Construction Manager shall include an express provision in its Trade Contracts providing for such waiver except with respect to Contemplated Delays resulting solely from events falling into categories (ix) through (xi), above.

**6.03** In furtherance of the provisions of Sections 6.01 and 6.02 hereof, Construction Manager shall include in all Trade Contracts, whether for labor or materials or both, a provision entitling Construction Manager to terminate or cancel such Trade Contract in the event of a breach thereby by the Trade Contractor or any other occurrence or omission thereunder which would result in a delay in, or hindrance to, the timely progress of the Work.

**6.04** Construction Manager shall notify Owner/Developer promptly and in writing, if the Work will not be completed within the time provided for in the Progress Schedule. If Construction Manager so notifies Owner/Developer, or if, in the opinion of Owner/Developer reasonably exercised, Construction Manager falls behind in the Progress Schedule for any reason other than a Contemplated Delay, Construction Manager shall take appropriate action to improve the progress of the Work and shall, if requested by Developer, submit operational plans to demonstrate the manner in which the lost time may be regained if possible. **Construction Manager acknowledges that if it fails to complete the Work within the time provided in the Progress Schedule, together with extensions permitted pursuant to this Agreement, due to its own fault or the fault of parties for whom Construction Manager is responsible including any Trade Contractor, it would be difficult, if not impossible to determine**

actual damages to Owner/Developer. Consequently, the parties agree that if Substantial Completion has not been achieved by the Substantial Completion Dates specified in the Progress Schedule, by reason of such delay, Construction Manager shall be required to pay to Owner/Developer, as and for liquidated damages (and not as a penalty) incurred by Owner/Developer as a result of such delayed completion, an amount of \$XX (XXXXX ) for each day Substantial Completion is delayed beyond the Substantial Completion Date specified in the Progress Schedule. Any liquidated damages required to be paid by Construction Manager pursuant to this Section 6.04 shall (a) be in satisfaction of any actual damages to which Owner/Developer would otherwise be entitled as a result of the occurrence of Construction Manager's delay and shall be the sole and exclusive remedy to Developer for late Project delivery; (b) be paid promptly by Construction Manager on demand of Developer; and (c) survive termination of Construction Manager to complete the Work within the scheduled completion dates set forth in this Agreement. Notwithstanding the foregoing or anything elsewhere set forth in this Agreement, at Owner/Developer's option all or any portion of such liquidated damages may be deducted from the amount of any payment required to be made by Developer to Construction Manager under this Agreement. To the extent Construction Manager is delayed and achieves Substantial Completion (as defined herein) of a portion of the Project, the aforementioned liquidated damage amount shall be reduced pro rata based upon valuation of income to the extent Substantial Completion has been achieved.

**DEVELOPER**  
**INITIAL HERE:**

**CONSTRUCTION MANAGER**  
**INITIAL HERE:**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**6.05** On or before the Substantial Completion Date, Construction Manager shall clear, or cause to be cleared, the Project Site and the Project of any debris, construction materials, rubbish, rubble, discarded equipment or spillage caused by Construction Manager or its Trade Contractors of solid or liquid waste in full compliance with all applicable environmental laws, shall remove all tools, construction equipment, machinery and surplus materials not belonging to Developer, and shall, except to the extent necessary to achieve Final Completion, maintain the Project free of such items until Final Completion. In addition, on or before the Substantial Completion Date, Construction Manager shall clean, or cause to be cleaned in broom clean condition the Project, as provided in the Construction Documents. If the Project or the Project Site are injured or damaged by Construction Manager, in the course of Construction Manager's cleaning or removal, Construction Manager, to the extent applicable, promptly shall repair and restore the portion thereof so damaged or injured to its condition immediately prior to such damage or injury in a manner satisfactory to Developer and Architect. If Construction Manager fails to undertake or cause the undertaking of the aforesaid cleaning, removal and repairs, in such event, Owner/Developer may, at Owner/Developer's sole option, avail itself of any of the remedies provided in this Agreement and, subject to giving forty-eight (48) hours' prior written notice to Construction Manager, Owner/Developer may also perform, or cause to be performed, the aforesaid cleaning, removal and repairs and, in such event,

all additional expenses incurred by Developer in connection therewith, at Developer's option, shall be reimbursed to Owner/Developer either by (a) Owner/Developer not paying Construction Manager monies then due or next becoming due from Owner/Developer to Construction Manager hereunder, or (b) Construction Manager paying such amounts to Developer on demand, after rendition of a bill or statement therefor.

**6.06** Prior to Substantial Completion of the Work, Owner/Developer or Owner/Developer's designees shall have the right to use or occupy all or any portion of the Project or to install or cause the installation of furniture, furnishings and equipment therein, provided that such occupancy shall not materially interfere with Construction Manager's performance of its obligations hereunder and, provided further, that Owner/Developer or Owner/Developer's designees, as the case may be, shall be liable for any delay, or personal injuries to, or death of, any person and for property damage, to the extent the same is caused by the acts or omissions of Owner/Developer or Owner/Developer's designees, as the case may be, in connection with their aforesaid use of occupancy of the Project. Such use or occupancy by Owner/Developer or Owner/Developer's designees shall not (a) constitute acceptance by Owner/Developer of any element of the Work or the space, systems, materials or equipment incorporated in the Project, (b) be construed as a waiver of any right or claim by Owner/Developer in connection with any Work, or (c) affect the obligations of Construction Manager or any Trade Contractor for any Work which is not in accordance with this Agreement, the respective Trade Contracts or the Contract Documents. Construction Manager shall continue performance of the Work in a manner which shall not unreasonably interfere with the aforesaid use, occupancy and operation by Owner/Developer or Owner/Developer's designees. Construction Manager agrees that it shall not unreasonably interfere with, or object to, such use or occupancy by Owner/Developer or Owner/Developer's designees and that it shall cooperate with Developer and any designated occupants to facilitate such early occupancy. If Contractor considers area being occupied as Substantially Complete, they can request inspection and sign off as Substantially Complete prior to partial occupancy.

**6.07** Owner/Developer and Owner/Developer's designees shall have the right of access to the entrances, loading facilities and such other services as Construction Manager shall be using or providing to the Project. Such right of access shall be subject to the reasonable rules of Construction Manager, which rules (a) shall be for the sole purpose of coordinating such access and for observing all safety and precautionary measures, and (b) shall not hinder, prohibit or interfere with such access. In addition, Owner/Developer may require the use and operation of any completed heating, ventilating or air conditioning equipment at the time that Owner/Developer or Owner/Developer's designees occupy or use any portion of the Project.

**6.08** INTENTIONALLY OMITTED

## ARTICLE VII

### **Construction Manager's Work**

**7.01** Pre-Construction Phase. Construction Manager agrees that during the pre-construction phase of the Work (the "Pre-Construction Phase"), it shall perform the following services:

- (a) consult with Owner/Developer and Architect to ascertain Owner/Developer's needs and goals and the requirements of the Work;
- (b) thoroughly review all preliminary plans and specifications, and all revisions and additions thereto, for the purpose of preparing and submitting to Owner/Developer a preliminary budget (the "Construction Budget"), to be in such form and contain such detail as required by Owner/Developer and which Construction Budget shall be revised as requested by Owner/Developer;
- (c) provide assistance to, and cooperate with Owner/Developer and Architect in obtaining all necessary approvals of governmental authorities having jurisdiction over the Project;
- (d) thoroughly investigate existing surface conditions at the Project Site and consult with and advise Owner/Developer and Architect concerning all materials and major design, building systems and construction elements to be incorporated in the Work, taking into consideration costs, availability, lead time for ordering materials, speed of construction and maintenance;
- (e) review estimates, if any, of Architect and Consultants with respect to the costs of the Work;
- (f) review the Construction Documents as they are being prepared for the purpose of making recommendations, and make recommendations to Owner/Developer and Architect with respect to the following:
  - (i) the availability of labor, materials and supplies;
  - (ii) elimination of possible conflicts and/or overlapping jurisdictions among the various trades or overlapping responsibilities among Trade Contractors;
  - (iii) patent conflicts and omissions, and variations from customary construction practices and methods which, in the opinion of Construction Manager, may cause difficulties or occasion delay in the performance of the Work, it being expressly understood that by review of the Construction Documents, Construction Manager shall not thereby assume responsibility for design errors and omissions;
  - (iv) discrepancies and deficiencies in the Construction Documents, or between the Construction Documents and existing conditions at the Project;
  - (v) conduct of construction operations under good construction practices;

(vi) costs of labor, supplies, materials equipment and Trade Contracts to be used in the performance of the Work and any such costs that will exceed budgeted or allowed amounts;

(vii) unit prices and alternates;

(viii) required temporary and Project support facilities;

(ix) construction detailing; and

(x) construction economies through alternative methods, materials, or concepts, consistent with Developer's requirements and sound construction practice;

(g) establish, implement and observe all safety, health and environmental protection measures during performance of the Work, consistent with the requirements of all applicable federal, state and local laws, rules and regulations; submit to Owner/Developer for approval, and periodically update, as necessary, appropriate or may be required, safety plans for the Project showing the manner in which the aforesaid measures are to be implemented;

(h) in consultation with Owner/Developer and Architect, develop the most favorable way of bidding the Work, including, without limitation, the size and scope of each bid package, and dates of bidding and use of "fast-track" methods;

(i) if applicable, make recommendations regarding, and render assistance necessary for, the development and administration of an effective labor relations program for the Work and the avoidance of labor disputes during the performance of the Work and assist in negotiating any agreements with labor unions;

(j) in consultation with Owner/Developer and Architect and as expeditiously as is required for the orderly and timely completion of the Project, prepare and submit to Owner/Developer for its approval, a progress schedule for the performance of the Work, make such modifications thereto as Owner/Developer may reasonably request and, upon Owner/Developer's approval of the same (which, subsequent to such approval is hereinafter referred to as the "Progress Schedule"), make no further modifications thereto without first in each instance obtaining Owner/Developer's prior approval thereof. The Progress Schedule shall also (i) set forth a construction time schedule which identifies all major and critical components of the Project and the Work, including Architect's preparation of design documents, all major and critical design details and all matters relating to Trade Contractors and Trade Contract awards, and which identifies Owner/Developer's responsibilities, if any, with respect to the design documents, and (ii) from and after the date that the same is available, incorporate the information described in this Section 7.01. Construction Manager agrees that the Progress Schedule shall not be amended, modified or extended without Owner/Developer's prior written approval;

(k) advise and make recommendations to Owner/Developer and Architect regarding the best order and sequence for the development of the Construction Documents;

(l) maintain written records of all communications with, and recommendations made to, Architect, and Architect's responses thereto; make the same available for inspection by Owner/Developer at all times and promptly furnish to Owner/Developer copies of all correspondence between Construction Manager and Architect relative to the Work and the Project;

(m) advise and consult with Owner/Developer and obtain Owner/Developer's approval of, Trade Contractors qualified to bid the various packages of the Work as well as methods of, and the form of, Trade Contract awards, and award Trade Contracts all in the manner set forth in Article VIII hereof;

(n) review with Trade Contractors all methods and materials that may be used in connection with the Work and make recommendations to Owner/Developer and Architect regarding changes, if any, to the Construction Documents;

(o) make a materials survey, including an analysis of all materials and equipment required for the Work and a forecast of the availability thereof as and when needed, including advice of any factors or potential occurrences then known by Construction Manager which might affect the future availability of such materials and equipment and coordinate all purchases of materials and equipment; and

(p) implement the pre-purchasing of any long-lead materials and/or equipment necessary to be incorporated in the Work.

Construction Manager agrees to perform such other and additional services similar in type and obligation to those listed above, prepare such other reasonably requested schedules, reports, budgets and other technical data, and attend such meetings during the Pre-Construction Phase as Owner/Developer may reasonably request in order to assist in the preparation of the Construction Documents, cost estimates, updated Progress Schedules and any other documents and instruments relative to the Work and the Project, to the end that completion of the Work may be brought and maintained within the Construction Budget, to the extent applicable, and Substantial Completion Date.

**7.02 Construction Phase.** Construction Manager agrees that during the Construction Phase of the Work (the "Construction Phase"), which Construction Phase shall commence on the date of commencement of construction of any portion of the Work, upon which Owner/Developer gives notice to Construction Manager and provided that Owner/Developer has obtained the necessary construction financing and building permits required by Authorities having jurisdiction for such Work (unless otherwise agreed by Owner/Developer and Construction Manager), and shall terminate on the date of Final Completion of the Work, it shall perform the following services:

(a) establish procedures for the orderly and expeditious performance and Final Completion of the Work in accordance with the terms of this Agreement; perform or require to be performed, all Work necessary in connection therewith; establish procedures for administration of Trade Contracts; and maintain coordination among Trade Contractors;

(b) prepare Project Site organization and lines of authority in order to carry out the Work on a coordinated basis;

(c) organize all staff and assign personnel (beyond staff pre-approved in **Exhibit C**), as approved by Owner/Developer in writing, to various areas to provide a positive and efficient means by which the Work may be controlled, coordinated and expedited;

(d) in consultation with Owner/Developer and Architect, update the latest Construction Budget prepared in the course of the Pre-Construction Phase, setting forth in such manner and detail as Owner/Developer may require, all anticipated costs of the Work for (i) all Trade Contractors performing labor or furnishing materials under Trade Contracts, other than Trade Contracts awarded solely for the performance of General Conditions Work Items, on a trade-by-trade and square foot basis, and (ii) all of Construction Manager's personnel and labor referred to in Section 3.07 hereof, and (iii) all General Conditions Work Items broken down on an itemized, line item, basis, and segregated to reflect those portions of said General Conditions Work Items which are to be performed by Construction Manager and those portions which are to be performed by Trade Contractors; update monthly, in consultation with Owner/Developer and Architect, and submit to Owner/Developer for its approval, such Construction Budget, and make such adjustments thereto, including adjustments by reason of approved Change Orders and Emergency Change Orders, to keep Owner/Developer currently informed as to the anticipated aggregate Costs of the Work. Construction Manager agrees that if there exists any factor, event or occurrence of any kind which in Construction Manager's opinion, inhibits or prevents the furnishing of accurate cost forecasts, then and in such event, Construction Manager promptly shall so advise Owner/Developer in writing;

(e) coordinate the scheduling of the Work;

(f) require submission of, and review, progress schedules of Trade Contractors and make adjustments to such schedules as appropriate in an effort to continue the expeditious Final Completion of the Work within the time periods set forth in the Progress Schedule;

(g) except as otherwise provided in Article XXII hereof, obtain Owner/Developer's written approval of any changes in the Work and any approvals or other documents necessary in connection therewith;

(h) conduct necessary job and coordination meetings, which job meetings shall be held not less often than weekly unless not required and which coordination meetings shall be held as required, and attend all such meetings;

(i) prepare agendas and detailed written minutes of each job and coordination meeting and furnish copies thereof to Owner/Developer and Architect;

(j) prepare and maintain a Project record keeping system, including records of all changes in the Work necessitated by reason of Change Orders, Emergency Change Orders, Work progress schedules, daily manpower breakdown, shop drawing logs, material lists, records of all pertinent communications with, and recommendations made to, Architect and its responses thereto, and daily reports recording manpower breakdowns on a trade-by-trade basis with a description of the Work being performed each day by each trade, equipment and material deliveries, visitors, special occurrences, weather



conditions, and other Work related information and make such on-Project Site records available for inspection to Owner/Developer (and, if required by Owner/Developer, to Architect and/or Consultants). In addition, copies of all correspondence pertaining to the Work shall be maintained by Construction Manager and shall be made available at all times to Owner/Developer;

(k) submit to Owner/Developer on a bi-monthly basis the following: (i) the financial condition of the Work, including Trade Contract awards, Construction Budget modifications, anticipated cost summary and Change Order summary; (ii) construction status, including updated Progress Schedules with projected critical dates compared with original milestone dates, status of job progress to date, current Work activity, projected Work activity for the following month, and status of materials required and Procurement Logs; and (iii) drawing status, including status of shop drawings, shop drawing schedule, status of coordination drawings, coordination drawing routing schedule, status of RFI Logs, and coordination meeting minutes;

(l) require that Trade Contractors submit and assemble and review, brochures, guarantees, certificates of compliance and other agreements and instruments;

(m) obtain and review for constructability (but not as a substitute for Architect's technical review) all shop drawings, samples and catalog cuts submitted by Trade Contractors and comment to Owner/Developer and Architect on their form and any significant inconsistencies between the shop drawings and the Construction Documents; and after Construction Manager shall so review said documents it shall promptly submit the shop drawings to Architect for review and approval. After return of the shop drawings from Architect, Construction Manager shall review Architect's comments to the shop drawings; and distribute them to the submitting Trade Contractor and all other affected parties. Architect shall review and return to Construction Manager all shop drawings and other submittals within ten (10) business days, if submitted in accordance with an approved submittal schedule as provided by the Construction Manager and reviewed with the Architect and Owner/Developer within thirty (30) days of the execution date of this Agreement. Construction Manager shall (i) hold the submitting Trade Contractor responsible for the accuracy and adequacy of the shop drawings, and (ii) ensure that the submitting Trade Contractor makes, at no additional cost, any revisions to the shop drawings that are necessary to implement Architect's comments so that the Work may be properly coordinated and implemented into the Project. Construction Manager acknowledges and agrees that as part of its obligations under this Agreement, Construction Manager and its Trade Contractors are to prepare and submit shop drawings and other submissions, conduct coordination meetings and prepare coordination drawings for the purpose of coordinating the work required of Construction Manager and its Trade Contractors. Owner/Developer shall require the attendance of Architect at coordination meetings, when requested by Construction Manager. This process, in part, is intended to recognize and resolve design conflicts in advance of fabrication and installation of the various components of the Work. Construction Manager agrees that it shall expeditiously and thoroughly prepare and submit shop drawings and conduct and conclude the coordination effort at the earliest possible time so as to facilitate the recognition and resolution of conflicts, including errors in the Construction Documents, such that any adverse effects on the progress of the Work are avoided to the fullest extent reasonably possible. Similarly, the proposal of substitutions in accordance with Article XXI of this Agreement shall be conducted at the earliest possible time. Nothing herein shall

relieve Construction Manager from its own failure to comply with its obligations with respect to shop drawings, samples and catalog cuts;

(n) at the Project Site, on a current basis:

(i) maintain, and make available to Owner/Developer, Architect and/or Consultants, copies of any records with respect to Trade Contracts, shop drawings, samples, operating manuals, the Construction Documents, equipment and any and all other related documents and any revisions to any of the foregoing which may arise out of, or be related to, this Agreement;

(ii) maintain and provide, and make available to Owner/Developer, Architect and/or Consultants, any photos, including progress photos taken on a monthly basis according to a plan, as previously approved by Owner/Developer; and

(o) upon final completion of the Work, deliver to Owner/Developer copies of a complete set of marked "Record Drawings", with respect to all Trade Contract documents and Construction Documents, as actually completed, together with copies of all operating instructions and maintenance manuals (bound and indexed);

(p) establish and coordinate with Owner/Developer a system for processing, expediting and administering all Trade Contracts for the purchase of materials, supplies and equipment. Manage the procurement and delivery of critical materials to the Project Site and coordinate the deliveries with the progress of the Work;

(q) notify Owner/Developer and Architect of the progress of the Work, and advise Owner/Developer, in accordance with the provisions of Article VI hereof, of any delays or serious potential delays which may affect Substantial Completion of the Work and of Construction Manager's recommendations regarding such delays;

(r) inspect and coordinate the work of all Trade Contractors, enforce the terms of their respective Trade Contracts and enforce strict discipline and good order among all Trade Contractors in an effort to see that the Work is performed in accordance with the terms of such Trade Contracts, the Contract Documents, recognized trade standards and the applicable laws, rules and regulations of governmental authorities having jurisdiction over the Work and endeavor to guard Owner/Developer against any delays, increased costs and defects and deficiencies in the Work. In connection with the foregoing, Construction Manager shall (i) require any Trade Contractor to stop the performance of any Work which Construction Manager observes is not in compliance with the requirements of its respective Trade Contract, the Contract Documents, recognized trade standards or the applicable laws, rules and regulations of any governmental authorities having jurisdiction over the Work; (ii) reject and require to be corrected, those portions of the Work which Construction Manager discovers does not conform to the requirements of the applicable Trade Contract, the Contract Documents, recognized trade standards or the applicable laws, rules and regulations of any governmental authorities having jurisdiction over the Work; (iii) inspect all materials, supplies and equipment delivered or installed in connection with, or pursuant to, any Trade Contract in an effort to determine that the same are in compliance with the requirements of the applicable Trade Contract, the

Contract Documents, recognized trade standards and the laws, rules and regulations of all governmental authorities having jurisdiction over the Work and reject and require replacement of all non-conforming materials, supplies and equipment; and (iv) not employ on the Work any person or Trade Contractor unfit for or unskilled in the assigned task and, remove such unfit or unskilled employee or such Trade Contractor from the Project Site;

(s) enforce at all times on or about the Project Site a strict no smoking policy;

(t) employ a “zero tolerance” policy regarding the use or presence at the Project Site of alcohol, drugs, controlled substances, and firearms, and take immediate appropriate action upon discovery of any employee or personnel who is or may be under the influence or otherwise in possession of any of the foregoing. Should Developer determine in its sole but not arbitrary discretion that any person employed by Construction Manager or a Trade Contractor is unfit to remain at the Project Site, Owner/Developer shall so advise Construction Manager who immediately shall take all required steps to remove that person from the Project Site at once, and to replace that person, as required, with a suitable person;

(u) not load or permit any part of the Work to be loaded so as to endanger its safety;

(v) arrange for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly;

(w) use best efforts to resolve disputes between Trade Contractors relative to the performance of their work or the furnishing of materials, supplies or equipment in connection with the Work;

(x) arrange for the storage of all materials, supplies, systems and equipment provided in connection with the performance of the Work;

(y) maintain the Project Site in a safe and orderly fashion and ensure Trade Contractors provide Project Site clean-up of the Work on a regular basis during the course of construction, and also upon Substantial Completion and Final Completion, as provided in this Agreement;

(z) implement all necessary and prudent safety, health and environmental protection procedures (including, but not limited to, federal including OSHA, state and locally mandated programs and statutory requirements) during performance of the Work, which shall include, but is not limited to: the erection and maintenance of temporary systems; the posting of danger signs and other warnings against hazards; the conducting of inspections; and enforce the requirement that all Trade Contractors comply with applicable laws relating to safety, health, and environmental protection in connection with the Work;

(aa) prepare a schedule of values and Applications for Payment in a form reasonably approved by Owner/Developer and City; determine, prior to the submission of each Application for Payment, whether and to what extent the sums requested herein are due and payable; and certify to the best of Construction Manager’s knowledge, information and belief the same to Owner/Developer;

(bb) make recommendations with respect to any changes Construction Manager may consider necessary or desirable in connection with the Work (including, but not limited to, events of force majeure or Contemplated Delay), it being understood and agreed that, except as otherwise provided in Section 22.05 and 22.06 hereof, no changes to the Contract Documents may be made in connection with the Work without the prior written approval of Owner/Developer;

(cc) issue to Trade Contractors (i) all Change Orders approved by Owner/Developer, and (ii) all Emergency Change Orders in the manner and in accordance with the provisions set forth in Article XXII hereof;

(dd) with respect to portions of the Work to be performed pursuant to a Change Order an Emergency Change Order, on a time and material, unit-cost or other similar basis, keep and require the keeping of records and computations thereof and maintain accurate cost accounting records, and provide copies thereof to Owner/Developer;

(ee) review all Trade Contractors' insurance documents for compliance with the provisions of their respective Trade Contracts. Inform Owner/Developer of any deficiencies in said coverage;

(ff) assist Owner/Developer in determining when Substantial Completion of the Work has taken place; subsequent to Substantial Completion of the Work, prepare (in consultation with Architect) lists of incomplete or unsatisfactory Work ("Punch List") as may be required by the Owner/Developer and City. Construction Manager shall perform or cause to be performed, and supervise all work necessary to complete the items set forth on the Punch List; provided, however, that the failure to include any element of the Work on such Punch List shall not alter the responsibility of Construction Manager and/or Trade Contractors to complete the Work in accordance with the Contract Documents; and subsequent to the completion of all items set forth on the Punch List items and any other unfinished portions of the Work, provide written notice to Owner/Developer, Architect (and if requested by Owner/Developer, to Consultants), that the Work has reached the stage of Final Completion and is ready for final inspection;

(gg) perform the coordination and implementation of the initial startup, testing, commissioning, and operation of the Work and all systems comprising a portion of the same including the participation of Owner/Developer maintenance personnel in all activities;

(hh) prior to making final payment under any Trade Contract, (i) prepare a Trade Contract status summary indicating its financial status, complete with a summary of all approved Change Orders and payments made to date, and (ii) secure and deliver to Owner/Developer all required guarantees, affidavits, releases of liens, waivers, certificates, consent of any surety to final payment, as-built drawings, maintenance manuals, operating instructions and other documents required to be delivered under this Agreement in connection with the Work;

(ii) secure and deliver to Owner/Developer all governmental consents, approvals, licenses and permits customarily obtained by a construction manager performing services and functions similar to the services and functions being performed by Construction Manager hereunder, including, but

not limited to, obtaining a TCO unless the failure to obtain the TCO and/or CO is not due to any full or partial fault of Construction Manager, its Trade Contractors or anyone for whose acts they may be liable; it being expressly understood that the making of final payment by Owner/Developer to Construction Manager hereunder shall be conditional upon the deliverance by Construction Manager of the foregoing to Owner/Developer unless the failure to obtain any of the above is due to causes beyond the reasonable control of Construction Manager;

(jj) establish and implement in a consistent and conscientious manner a quality control system, and to the extent Owner/Developer elects to use an automated quality assurance/quality control program, utilize such program to identify and track incomplete and/or deficient items; include within the logistics plan and review with Owner/Developer prior to implementation the placement and phased removal of on-Site shanties, trailers and storage areas; coordinate with all mechanical Trade Contractors and Architect as required to verify that all shut-off valves and controls are outside of occupied spaces (as identified to Construction Manager) and readily accessible; require that Construction Manager's superintendent is present and specifically approves the placement of all mechanical equipment with regard for functional accessibility, maintenance and replacement; and at all times be responsible for and maintain proper security and weather tight conditions at all hoist and all other temporary building openings;

(kk) The following tasks shall be included within Construction Manager's scope of Work;

(i) Eliminate or if elimination is not possible then minimize to the greatest extent possible any exterior scaffold work in front of windows of any areas turned over to Developer for occupancy; and

(ii) Note (in the field and on drawings) locations of all shut-off or balancing valves, volume or fire dampers, etc. to assure that access doors are installed in the proper locations, including any plumbing, HVAC, electric or sprinkler system control valves, dampers, balancing valves, switches, electric or control ties in points/splices.

**7.03** Notwithstanding the division of Construction Manager's work into the Pre-Construction and Construction Phases as provided in this Article VII, Construction Manager understands and agrees that the Project may proceed on a "fast-track" basis and that portions of the Work to be performed by Construction Manager in the Pre-Construction Phase may overlap and be combined with portions of the Work to be performed in the Construction Phase.

#### **7.04**

(a) Construction Manager and all Trade Contractors shall warrant and represent that all materials and equipment incorporated in the Work shall be new and that the Work shall be of good quality, free from improper workmanship and defective materials and in strict conformance with the Contract Documents, and all applicable laws, rules, requirements and regulations of any governmental authorities having jurisdiction over the Work. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective;

(b) Construction Manager and all Trade Contractors shall guarantee all Work or portion thereof for a period of one (1) year after the earlier of Substantial Completion of the Work or beneficial occupancy of any portion thereof or such longer period as prescribed by the Construction Documents or governing laws and statutes. In the event the Work or any portion thereof is found defective or not in accordance with the Contract Documents, within such time period, Construction Manager shall require the appropriate Trade Contractor to correct it promptly after written notice from Owner/Developer to do so unless Owner/Developer has previously given written acceptance of such condition. Owner/Developer shall give such written notice promptly after discovery of the same. All warranties/guarantees for longer than one (1) year shall be assigned to Owner/Developer.

(c) Nothing contained in subparagraph (b) of this Section 7.04 shall be construed to establish a period of limitation with respect to any other obligation which Construction Manager might have under the Contract Documents. The establishment of the time periods noted in subparagraph (b) of this Section 7.04, relates only to the specific obligation of Construction Manager to require the appropriate Trade Contractor to correct the Work, and has no relationship to the time within which Construction Manager's or a Trade Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Construction Manager's liability with respect to Construction Manager's obligations.

**7.05** If conditions are encountered at the site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly upon knowledge thereof or before conditions are disturbed. Owner/Developer will promptly investigate such conditions and, if they differ materially and cause increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both, as a Change Order.

## **ARTICLE VIII**

### **Trade Contracts**

**8.01** Unless otherwise agreed upon in writing by Owner/Developer, all items of the Work to be performed and all materials, supplies and equipment to be furnished in connection therewith shall be performed by Trade Contractors, approved by Owner/Developer, pursuant to written Trade Contracts awarded by Construction Manager, which Trade Contracts shall be written on Construction Manager's trade contract form (the "Trade Contract Form"). Trade Contract Forms shall be submitted to Owner/Developer for approval in writing prior to issuance to any Trade Contractors. Prior to awarding any Trade Contract, Construction Manager shall consult with Owner/Developer with respect to Trade Contractors qualified to bid the various portions of the Work, as well as the methods of, and form of, Trade Contract awards. Thereafter, Construction Manager shall (a) prepare, in consultation with Owner/Developer and subject to its approval (and, if requested by Owner/Developer, in consultation with Architect), the invitation for bid, bid package and a bidder's list, setting forth at least three (3) Trade

Contractors for each trade (the “Bid List”), (b) request bids from the various Trade Contractors on the Bid List, (c) conduct, in cooperation with Owner/Developer, formal pre-bid meetings with bidders of each trade involved in the performance of the Work for the purpose of explaining the scope of the Work, and (d) open all Trade Contract bids obtained, and review the same, in the presence of and in conjunction with Owner/Developer. Also, prior to awarding any Trade Contract, Construction Manager shall consult with Owner/Developer with respect to Construction Manager’s evaluation of Trade Contract bids and the awarding of Trade Contracts and, subject to the approval of Owner/Developer, shall negotiate the most favorable price and terms to be included in such Trade Contracts. Thereafter, Construction Manager shall, by letter in a form approved by Developer (the “Trade Contract Award Letter”), advise Owner/Developer of (a) which Trade Contract bids it intends to request for approval, (b) the price of the proposed Trade Contract awards and (c) any proposed material differences between the provisions of the Trade Contract Form and the terms of the Trade Contract that Construction Manager proposes to enter into with said Trade Contractor. For purposes hereof, the term “material difference” shall be deemed to mean changes to the Trade Contract Form that (a) permit the Trade Contractor thereunder to observe a lesser standard of care in the performance of its obligations to Construction Manager under the Trade Contract than Construction Manager is obligated to observe under the terms of this Agreement, (b) any other difference which is similar in nature to the aforesaid or is a difference that may have a cost, liability or other consequence to Owner/Developer. Upon receipt by Owner/Developer of Construction Manager’s Trade Contract Award Letter, Owner/Developer shall countersign the Trade Contract Award Letter, setting forth Developer’s acceptance, rejection or other comment regarding the difference between the proposed Trade Contract and the Trade Contract Form. Construction Manager, upon receipt of Owner/Developer’s Trade Contract Approval Letter, promptly shall make all required changes in the proposed Trade Contract and award the Trade Contract in question. All Trade Contracts shall be executed in triplicate by Construction Manager and shall be promptly delivered to Owner/Developer in a manner as requested by Owner/Developer.

**8.02** Each Trade Contract shall require that all Work performed or materials, supplies or equipment furnished pursuant thereto shall comply with the Contract Documents, the building permit and the trade standards, laws, rules, regulations and requirements of all governmental authorities having jurisdiction over the Work. It is expressly understood and agreed that no portion of the Work shall be performed, and no materials or equipment required on account of the Work shall be furnished, by any Trade Contractor unless and until a Trade Contract for the same is entered into between Construction Manager and the Trade Contractor in question in accordance with the provisions of Section 8.01 hereof and a copy thereof is delivered to Owner/Developer, unless Owner/Developer expressly waives, in each instance, the requirement that the same be delivered as aforesaid.

**8.03** It is expressly understood and agreed that each Trade Contract to be entered into by Construction Manager in connection with the Work shall (a) require the Trade Contractor to obtain and execute, unless expressly waived in writing by Owner/Developer in each instance, payment and performance bonds and (b) containing the following:

(i) provisions for Retainage as required by Section 3.06, and provisions for mark-up on Change Orders as required by Section 22.01(a)(i);

(ii) an obligation on the part of the Trade Contractor promptly to repair, at no additional cost to Owner/Developer, any latent defects and to replace any defective materials, supplies or equipment;

(iii) a requirement that each Trade Contractor provide and maintain in full force and effect, until final payment is made under its Trade Contract, the insurance more particularly described in the approved Trade Contract; and

(iv) a provision that if this Agreement is terminated by Developer pursuant to Article XIV hereof, the Trade Contract, at the option of Owner/Developer, shall be assigned by Construction Manager to Owner/Developer or such entity or entities as Owner/Developer may direct and, in such event, the assignee shall assume all of Construction Manager's liabilities thereunder arising from and after the date of such assignment; provided, however, that nothing contained herein shall be deemed to release Construction Manager from liability to such Trade Contractor or to Owner/Developer or such other entity or entities with respect to claims arising prior to the date of such termination.

**8.04** Owner/Developer may request that Construction Manager contract with certain Trade Contractors of Owner/Developer's choosing ("Developer-selected Trade Contractors"). In such event, Construction Manager agrees to contract with Developer-selected Trade Contractors provided that they (a) satisfy Construction Manager's standard Trade Contractor prequalification process, including approval for enrollment into the SDI Program; and (b) agree to assume all obligations and liabilities set forth in this Agreement as applicable to their respective scopes of Work (e.g., agrees to assume their proportional share of any liquidated damages; agree to the limitations on claims for damages resulting from Contemplated Excusable Delays).

## **ARTICLE IX**

### **Discounts, Rebates and Refunds**

**9.01** With submission of Construction Manager's monthly Application for Payment, Construction Manager is obligated to inform Owner/Developer of any cash discounts which are anticipated in the upcoming pay period. All cash discounts shall accrue to Owner/Developer provided Owner/Developer makes payment to Construction Manager within the period necessary to secure such discounts. Construction Manager promptly shall inform Owner/Developer of the availability of all cash discounts so as to afford Owner/Developer the opportunity to obtain the same. All trade discounts, rebates, refunds and gratuities, if any, and all returns from the sale of surplus materials and equipment shall accrue to Owner/Developer and Construction Manager shall take such steps as are necessary to insure that Owner/Developer receives all of the foregoing.



## ARTICLE X

### **Accounting Records**

**10.01** Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be reasonably satisfactory to Owner/Developer. Owner/Developer at its option may provide to Construction Manager a general ledger listing of components (in the nature of a cost segregation report, which Owner/Developer needs for purposes of computing depreciation) and Construction Manager shall utilize such listing in all financial reporting.

**10.02** Construction Manager's Project staff shall maintain correspondence, minutes of meetings, schedules, invoices and requisitions which shall be maintained at the Project office, located at either: (a) Construction Manager's principal office, or (b) office trailers on the Project Site; and shall promptly be made available upon request for inspection and copying by Owner/Developer and its Lender.

**10.03** Construction Manager's Project staff shall perform all accounting and bookkeeping services requested by Owner/Developer to the extent necessary for proper financial management under this Agreement in connection with the Work including processing of all requisitions, payroll records and invoice processing for all labor, materials and equipment utilized in the performance of the Work, and payment of all Trade Contractor requisitions by Construction Manager. Specific attention is called to Owner/Developer's cost segregation requirements, as set forth in Section 10.01.

**10.04** Construction Manager's Project staff shall, as part of its record-keeping obligations under the Agreement, cause the Trade Contractors to maintain and supply to Owner/Developer records on a per Trade Contractor basis and for each Trade Contractor employee including the employee's name, address, telephone number, construction trade, employee identification number if and when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper or laborer), date of change status, hours worked per week in the indicated trade, rate of pay and location at which Work was performed.

**10.05** On reasonable notice from Owner/Developer to Construction Manager, Owner/Developer and its authorized representatives shall, be afforded full access to all Construction Manager's Project-related records, books, correspondence, instructions, Construction Documents, receipts, Trade Contracts, Change Orders, purchase orders, vouchers, memoranda and other data, and shall have the right to audit and photocopy such books and records. All books, records and other documents shall be in accordance with standard California building industry accounting practices. Such books and records to the extent that they relate to the Project shall be furnished to Owner/Developer in electronic form within three (3) months after completion of the Project.

## ARTICLE XI

### **Applications for Payment**

**11.01** Owner/Developer shall make progress payments to Construction Manager at monthly intervals for reimbursement of the costs incurred by Construction Manager during the Construction Phase in the performance of the Work and in payment of Construction Manager's Fee, General Conditions Costs and Reimbursable Costs in accordance with the following procedures, which procedures may be amended at the request of Lender:

(a) During the performance of the Work, Construction Manager and Owner/Developer, along with the Architect and Lender, shall meet at the Project Site on or before the first (1st) day of each month for the purpose of reviewing and approving Construction Manager's performance and completion of certain items of the Work and to review a draft of Construction Manager's application for partial payment. Based upon Developer's and City's review of such draft, on or before the fifth (5th) day of the calendar month following commencement of the Work and on or before the fifth (5th) day of each calendar month thereafter, with a pencil draft on the twenty-fifth (25<sup>th</sup>) of each month, Construction Manager shall submit to Owner/Developer, if required, for review and certification, its application for partial payment (the "Application for Payment"), in form satisfactory to Owner/Developer, setting forth in complete detail (i) the portion of Reimbursable Costs incurred by Construction Manager in connection with the Work during the immediately preceding thirty (30) calendar-day period for which Construction Manager is to be reimbursed as provided in Article IV hereof, and (ii) the amount of Construction Manager's Fee and General Conditions Costs attributable to such Reimbursable Costs payable that month. To the extent allowed by Owner/Developer under Article XX hereof, any materials which are stored but have not been incorporated into the Project shall be listed separately on each Application for Payment. Owner/Developer shall have the right to require that any or all Applications for Payment be accompanied by such documents (including written releases of lien from Construction Manager and/or Trade Contractors in the form annexed as **Exhibit H** and **Exhibit I**, as applicable, or in such other form as required by Owner/Developer) as Owner/Developer may require to evidence that title to the equipment or materials incorporated, in the Project, or pre-purchased as provided in Article XX hereof, is unencumbered. Unless otherwise directed or authorized in writing by Owner/Developer, all Applications for Payment and all supporting documents (including but not limited to waivers of lien and sworn statements) shall be in electronic format and shall be submitted to Owner/Developer using the Textura™ CPM payment management system. Construction Manager shall be responsible for the fees and costs associated with Construction Manager's use of the Textura™ CPM payment management system. Construction Manager shall include a similar requirement in all Trade Contracts and purchase orders entered by Construction Manager;<sup>1</sup>

(b) Each Application for Payment shall constitute a representation by Construction Manager that to the best of Construction Manager's knowledge, information and belief: (i) the partial

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<sup>1</sup> Project fees range from \$50 to \$50,000 based on the size of the Project. Subscription fees to Construction Manager range from \$55 to \$780 per month based on the size and number of projects Construction Manager is managing on the Textura CPM™ system. Fees to Trade Contractors are calculated as 0.18% (18 basis points) of contract value, with a minimum fee of \$50 and a maximum fee of \$2,500. Fees to Trade Contractors' subcontractors and suppliers are a fixed fee of \$100 per subcontract or supplier contract.

payment then requested to be disbursed has been incurred by Construction Manager on account of the Work or is justly due to Trade Contractors on account thereof, (ii) the materials, supplies and equipment for which such Application for Payment is being submitted have been installed or incorporated in the Project, or have been stored at the Project Site or at such off-Project Site storage locations [approved beforehand by Owner/Developer], as shall have been allowed by Owner/Developer hereunder; (iii) the materials, supplies and equipment are not subject to any liens or encumbrances, (iv) no mechanic's, laborer's, vendors, materialman's or other liens have been filed in connection with the Project or any of the materials, supplies or equipment incorporated therein or purchased in connection thereto, or if such lien has been filed and served upon Construction Manager a statement to that effect and (v) the Work which is the subject of such Application for Payment has been performed in accordance with the Contract Documents. Construction Manager shall carefully examine all payment breakdowns and applications for payment submitted by Trade Contractors in an effort to eliminate "front-end loading"; shall report any attempts to so "front-end load" in writing to Owner/Developer; and shall under no circumstances, except with the specific prior written approval of Owner/Developer, request or allow payments to be made to any Trade Contractor which are "front-end loaded" and which do not accurately reflect the true value of the work performed or the materials, supplies or equipment actually furnished;

(c) Owner/Developer shall conditionally approve or disapprove all or a portion of Construction Manager's Application for Payment within twelve (12) calendar days of receipt. On the forty-fifth (45th) calendar day after Owner/Developer determines the amount properly payable to Construction Manager for Work completed to Owner/Developer's satisfaction, Owner/Developer shall pay to Construction Manager an amount equal to the amount approved by Owner/Developer and City less retention set forth in Section 3.13 hereof of the Trade Contractor Costs (including payments to Trade Contractors for the performance of General Conditions Work Items pursuant to Trade Contracts) with input by Architect, and Construction Manager's Fee and General Conditions Costs. With approval from Owner/Developer, Construction Manager may release Trade Contractor retention on a trade-by-trade basis upon final completion of a given Trade Contractor's work. Owner/Developer shall direct its Lender to disburse the loan proceeds in the amount approved directly to Construction Manager by wire transfer. Construction Manager shall process and make payments for all obligations to Trade Contractors, which are covered by the Application for Payment so paid by Owner/Developer within seven (7) calendar days of receipt of payment from Owner/Developer. This provision is strictly for the benefit of Owner/Developer in order that satisfactory morale and relations with Trade Contractors be maintained and shall not under any circumstances confer any right upon any third party. Should Owner/Developer disapprove all or a portion of any Application for Payment, Owner/Developer will provide Construction Manager with a written explanation of the basis of its disapproval and will approve for payment any undisputed portions of the Application for Payment;

(d) Following Substantial Completion of the Work and submission of an Application for Payment therefor by Construction Manager, Owner/Developer shall pay to Construction Manager an amount equal to the balance remaining unpaid to Construction Manager on account of Reimbursable Costs, together with the amount of Construction Manager's Fee and General Conditions Costs due and payable, after deducting from monies otherwise due therefrom (i) any retention in connection with any Trade Contracts (including Trade Contracts for the performance of General Condition Work Items) as Owner/Developer shall be entitled to hold back pursuant to the provisions of Section 3.06 hereof (or at

Owner/Developer's election, such lesser amount with respect to any Trade Contract as Owner/Developer may determine), and (ii) a retention of two hundred percent (200%) of the amount necessary to complete Punch List items and replace defective work. Said Application for Payment shall also be accompanied (i) by written releases, executed by each Trade Contractor receiving final payment under their respective Trade Contracts, waiving their right upon final payment to file any mechanic's, vendors, laborer's, materialman's or other liens against the Project, and (ii) by such other certificates, as-built drawings, maintenance manuals, operating instructions, permits and other documents or instruments required to be delivered to Owner/Developer at Final Completion of the Work under this Agreement. Notwithstanding the foregoing, it is expressly understood and agreed that if, at any time after final payment with respect to a particular Trade Contract is released, any lien or claim is filed against the Project which relates to work performed or materials, supplies or equipment furnished by such Trade Contractor or its sub-Trade Contractors, Owner/Developer, at its option and provided Construction Manager does not bond or otherwise discharge such lien as required by Article XIII, shall be entitled either (i) to hold back from the sums then due or next becoming due to said Construction Manager an amount equal to all costs and expenses to be incurred in causing such lien or claim to be discharged of record, including, without limitation, attorneys' fees and disbursements, or (ii) to require that Construction Manager immediately discharge the same of record, at its sole cost and expense, except as provided in Article XIII, by payment, bonding or otherwise, or (iii) to require that Construction Manager pay to Owner/Developer, on demand, the amount necessary to cause such lien or claim to be discharged of record, together with all costs and expenses incurred by Owner/Developer in connection therewith, including, without limitation, attorneys' fees and disbursements;

(e) Following Final Completion of the Work, and upon submission of a final Application for Payment therefor by Construction Manager (accompanied by all as-built drawings, certificates, releases of lien and other documents and instruments not theretofore delivered to Developer as required under Sections 6.01 and 7.02 hereof) Owner/Developer shall pay to Construction Manager an amount equal to the aggregate of the balance remaining unpaid to Construction Manager on account of Reimbursable Costs and Construction Manager's Fee and General Conditions Costs, and the balance of any amounts retained under each Trade Contract. The acceptance by Construction Manager of final payment following Final Completion of the Work shall constitute a waiver of all those claims of which Construction Manager had knowledge unless the same is set forth in writing and identified by Construction Manager in the final Application for Payment as unsettled at the time of Final Completion; any claim so identified in the final Application for Payment shall survive only for a period of one (1) year and this contractual statute of limitations is a material term negotiated between Owner/Developer and Construction Manager in this Agreement .

(f) Anything contained in this Agreement to the contrary notwithstanding, Owner/Developer, in its judgment reasonably exercised, may withhold from any payment due or to become due to Construction Manager any amount which Owner/Developer, in its good faith opinion, deems sufficient to reimburse Owner/Developer for its expenditures for the account of Construction Manager and to secure Owner/Developer's remedies in consequence of any default or breach by Construction Manager under this Agreement.

**11.02** No payment by Owner/Developer (other than final payment) of any Application for Payment shall constitute acceptance by Developer of Work completed or material stored, and no such payment shall be construed as a waiver of any right or claim by Owner/Developer in connection with such Work or stored material.

## **ARTICLE XII**

### **Assignment**

**12.01** Construction Manager shall not assign this Agreement or the performance of all or any of its obligations hereunder without the prior written consent of Owner/Developer, which consent may be given or withheld in Developer's sole and exclusive discretion. The provisions of this Section 12.01 may not be waived or otherwise modified except by a written instrument executed by Owner/Developer.

**12.02** This Agreement shall be freely assignable by Owner/Developer without the consent of Construction Manager to an affiliate of Owner/Developer, or to any person or entity designated by Owner/Developer (hereafter referred to as a "Permitted Assignee"), provided (a) such Permitted Assignee agrees to assume Owner/Developer's obligations and liabilities hereunder; (b) Owner/Developer has paid all sums properly due to Construction Manager prior to the date of assignment; and (c) the Permitted Assignee has provided Construction Manager with satisfactory evidence of financing for the balance of the work. In all other cases, Owner/Developer's assignment of this Agreement is subject to the prior approval of Construction Manager, which approval shall not be unreasonably withheld or delayed and is subject to all of the requirements as a Permitted Assignee. If Owner/Developer shall assign this Agreement as aforesaid, Construction Manager agrees that it shall deal with such Permitted Assignee or other approved assignee in the place and stead of Owner/Developer and that it shall perform all of its obligations under this Agreement and perform and complete the Work in the manner required by this Agreement if Owner/Developer is not in default or if Permitted Assignee or other approved assignee cures the existing default. In such event, such Permitted Assignee or other approved assignee may, among other things, use the Contract Documents without payment of any additional fees or charges and may enforce the obligations of Construction Manager hereunder with the same force and effect as if Permitted Assignee or other approved assignee assumes the obligations and liabilities of Owner/Developer. Upon such assignment and assumption by the Permitted Assignee or approved assignee, provided Owner/Developer is current on all of its payment Obligations and there are not pending payment disputes, Owner/Developer shall be released from all of its payment and other obligations and liabilities hereunder. Construction Manager shall certify, in the form reasonably required by any such Permitted Assignee or other approved assignee, that the undertakings contained herein as to the obligations in favor of such Permitted Assignee or other approved assignee shall run in favor of such Permitted Assignee or other approved assignee.

## **ARTICLE XIII**

### **Liens and Claims**

**13.01** If, at any time, there is any lien or claim of any kind whatsoever filed against the Project by a Trade Contractor, subcontractor or supplier, or anyone claiming under or through Construction Manager,

for Work performed or materials, supplies or equipment furnished in connection with the Work for which Owner/Developer has paid or reimbursed Construction Manager, Construction Manager shall, within seven (7) calendar days after notice from Owner/ Developer, cause such lien or encumbrance to be canceled and discharged of record by bonding or otherwise, at Construction Manager's sole cost including but not limited to legal fees and expense.

**13.02** If, at any time, there is any lien or claim of any kind whatsoever filed against the Project by a Trade Contractor or anyone claiming under or through Construction Manager or a Trade Contractor for work performed or materials, supplies or equipment furnished in connection with Work for which Owner/Developer shall not have paid or reimbursed Construction Manager by reason of Owner/Developer's proper exercise of its right to withhold payment to Construction Manager under the applicable provisions of this Agreement, then Construction Manager shall, within fourteen (14) calendar days after notice from Owner/Developer, cause such lien or encumbrance to be cancelled and discharged of record by bonding or otherwise, at Owner/Developer's sole cost and expense.

**13.03** If any lien required to be removed pursuant to Sections 13.01 or 13.02 hereof is not cancelled and discharged of record as aforesaid, Owner/Developer shall have the right to take such action as Owner/Developer shall deem appropriate (which shall include the right to cause such lien to be cancelled and discharged of record by bonding or otherwise), and in such event, all costs and expenses incurred by Owner/Developer in connection therewith (including, without limitation, premiums for any finance furnished in connection therewith, and reasonable attorneys' fees and disbursements) shall be paid by Construction Manager to Owner/Developer on demand, or at the option of Owner/Developer, deducted from any payment then due or thereafter becoming due from Owner/Developer to Construction Manager in accordance with the provisions of this Agreement.

## **ARTICLE XIV**

### **Events of Default and Termination or Suspension of Agreement**

#### **14.01**

(a) Any of the following events shall constitute an event of default ("Event of Default")

(i) Construction Manager shall default in observing and performing any of its material obligations under this Agreement and such default shall not have been cured within seven (7) calendar days after Owner/Developer shall have given Construction Manager written notice thereof (or if not curable within seven (7) calendar days, provided Construction Manager has in good faith commenced to cure); or

(ii) Construction Manager becomes a party to any insolvency proceeding in a capacity as a debtor, and, in the case of any involuntary proceeding only, such proceeding is not stayed or discharged within thirty (30) calendar days after the commencement of same; the terms "insolvency proceeding" as used herein shall include the filing of a petition for relief under Chapter 11 of Title 11 of

the United States Code by Construction Manager of any petition or action looking to, or seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future federal or state statute, law or regulation, or the appointment, with or without the consent of Construction Manager, of any trustee, custodian, receiver or liquidator of Construction Manager or of any of its property or assets or Construction Manager's making an assignment for the benefit of creditors.

(b) Upon the occurrence of an Event of Default, Owner/Developer may serve written notice upon Construction Manager terminating this Agreement on date specified by Owner/Developer in said notice. In addition, at Owner/Developer's option, exercised by written notice to Construction Manager, title to any or all materials, Work in process, dies and tools (whether on the Project Site or located at an off-Project Site location) which are necessary for, or useful in connection with, the Final Completion of the Work, as determined by Owner/Developer, shall vest in Owner/Developer and Owner/Developer may take possession of and utilize the same for Final Completion of the Work. Construction Manager shall be entitled to payment, after Final Completion of the Work, in an amount equal to (i) the aggregate of (x) the actual unpaid costs incurred by Construction Manager in its proper performance of the Work up to the date of termination, plus the portion of the Construction Manager's Fee and General Conditions Costs attributable thereto (specifically excluding Fee and General Conditions Costs on unperformed Work), and (y) the fair market value of such tools and dies (less, if Owner/Developer elects to return the tools and dies to Construction Manager, the salvage value thereof), less (ii) an amount equal to the additional costs and expenses (including attorney's fees and disbursements) incurred by Owner/Developer in excess of those which would have been incurred by it in connection with the Project had Construction Manager not defaulted hereunder, including, without limitation, the additional expense of engaging another construction manager/general contractor as well as additional compensation for Architect's and any Consultant's additional services made necessary by such default (including reasonable legal fees incurred). Owner/Developer shall have the right to set-off against the aforesaid payment any amounts then due and payable by Construction Manager to Owner/Developer hereunder or which may accrue as damages owing by Construction Manager to Owner/Developer under the terms of this Agreement;

(c) Upon the happening of any of the events set forth in subsection (a) of this Section 14.01, Developer shall have the right, in addition to all other rights and remedies, to complete or cause the Work to be completed, by such means, and in such manner, by contract or otherwise, as Developer reasonably deems advisable, subject, however, to the terms and conditions of the payment and performance bonds required of Construction Manager hereunder; and

(d) In the event of the happening of any of the events set forth in subsection (a) of this Section 14.01, Construction Manager shall not interfere, directly or indirectly, with Developer's right and attempt to complete the Work by others or any of the Trade Contractors.

(e) Upon the happening of any of the events set forth in subsection (a) of this Section 14.01, Developer shall have the right, in addition to all other rights and remedies, to demand Construction Manager assign all Trade Contracts to Owner/Developer or an Owner/Developer Permitted Assignee. In order to facilitate this provision, Construction Manager shall place in each Trade Contract a provision

requiring the Trade Contractor to agree to assignment of its Trade Contract to Owner/Developer upon termination of the Construction Manager upon an Event of Default.

#### **14.02**

(a) Owner/Developer, at any time, and for any reason whatsoever in Owner/Developer's sole discretion, may terminate this Agreement for its own convenience. Any such termination shall be effected by delivering to Construction Manager a written notice of termination specifying the date upon which such termination shall become effective (which date shall be at least seven (7) calendar days prior to the effective date of such termination) and any specific portion of the Work to be completed by Construction Manager prior to such termination. Upon receipt of any such notice of termination, Construction Manager shall:

(i) stop all Work under this Agreement on the date, and to the extent, specified in the notice of termination;

(ii) enter into no further Trade Contracts except as may be necessary for completion of such portion of the Work under this Agreement, if any, which is not terminated;

(iii) unless directed otherwise by Owner/Developer, terminate all Trade Contracts entered into by Construction Manager to the extent that they relate to portions of the Work to be performed subsequent to the date specified in the notice of termination as the date upon which such termination shall become effective;

(iv) at Owner/Developer's option, assign to Owner/Developer, Lender or such other entity or entities as Owner/Developer may direct, in the manner, at the times, and to the extent directed by Owner/Developer, all of the right, title and interest of Construction Manager under any or all Trade Contracts entered into by Construction Manager in connection with the Work, in which case, Owner/Developer, Lender or such other entity or entities, as the case may be, shall assume all of Construction Manager's obligations arising under such Trade Contracts. Construction Manager shall include in each and every Trade contract a provision specifically contemplating and validating any such assignment and the Trade Contractor's agreement to continue to perform its services under the Trade Contract without interruption;

(v) to the extent required by Owner/Developer and subject to the prior written approval of Owner/Developer, settle all outstanding liabilities and all claims arising out of such termination of Trade Contracts, which approval by Owner/Developer shall be final for all the purposes of this Section provided, however, that in the event of a termination of this Agreement pursuant to the provisions of this Section 14.02, no Trade Contractor shall be entitled to recover anticipated profits on account of Work unperformed, nor for reimbursement for losses arising out of matters covered by insurance, but shall be limited to recovering only the reasonable and actual out-of-pocket costs and expenses incurred by such Trade Contractor for Work satisfactorily performed or materials, supplies and equipment procured, ordered, fabricated, incorporated or installed in the Project (plus overhead and profit) prior to the effective date of such termination along with reasonable and verifiable demobilization and closeout expenses;



(vi) if applicable, transfer title to Owner/Developer, to the extent not already vested in Owner/Developer, and deliver in the manner, at the times, and to the extent, if any, directed by Owner/Developer (x) fabricated or unfabricated parts, Work in progress, completed Work, supplies and other materials and equipment produced as a part of, or acquired in connection with the performance of, the Work terminated by such notice of termination, and (y) copies of the Contract Documents and other drawings, sketches, specifications, shop drawings, information and other relevant documentation directly related to the performance of the Work;

(vii) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by Owner/Developer, any property of the types referred to in clause (vi) of this Section 14.02(a); provided, however, that Construction Manager (x) shall not be required to extend credit to any purchaser, and (y) may acquire any such property under the conditions prescribed and at a price or prices approved by Owner/Developer; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Owner/Developer to Construction Manager under this Agreement or shall otherwise be credited to Reimbursable Costs or paid in such other manner as Owner/Developer may direct;

(viii) complete performance of such part of the Work as shall have been specified in the notice of termination to be completed on or before the effective date of such termination; and

(ix) prior to the effective date of such termination, take such actions as may be necessary, or as Owner/Developer may reasonably direct, for the protection and preservation of the property related to the Work and the Project which is in the possession of Construction Manager and in which Owner/Developer has or may acquire an interest.

(b) In the event of a termination of this Agreement, pursuant to this Section 14.02, Construction Manager shall be paid by Owner/Developer for (i) the actual unpaid Reimbursable Costs incurred by Construction Manager in connection with its performance of the Work up to the date of such termination and any reasonable demobilization costs, including costs associated with closing out of executed contracts and purchase orders, plus the portion of Construction Manager's Fee and General Conditions Costs attributable to Work properly performed up to the date of such termination (specifically excluding Fee and General Conditions Costs on unperformed Work), minus (ii) any sums properly deductible by Owner/Developer under the terms of this Agreement. In the event of a termination of this Agreement pursuant to this Section 14.02, Construction Manager shall remain responsible for all of its obligations and all Work performed prior to the date of such termination. Construction Manager agrees that the pendency or existence of any dispute between Construction Manager and Owner/Developer, Architect or Consultants shall in no manner whatsoever affect or interfere with the discharge of Construction Manager's obligations hereunder and that should Construction Manager fail to perform its obligations under this Section 14.02 Construction Manager shall be liable to Owner/Developer for any and all damages which Developer may sustain as a result of such failure on the part of Construction Manager to perform said obligations.

**14.03** Owner/Developer may, at any time and for any reason, direct Construction Manager to suspend, re-sequence, stop or interrupt the Work or any portion thereof for a period of time, including

governmental suspensions under an order of any court or other public authority having jurisdiction over the Work or the Project or as a result of an act of government, such as a declaration of national emergency making materials unavailable through no act or fault of Construction Manager. Such direction shall be in writing and shall specify the period during which the Work is to be stopped. Construction Manager shall resume the Work upon the date specified in such direction or upon such other date as Owner/Developer may thereafter specify in writing. Construction Manager shall be entitled to recover, pursuant to a Change Order, the actual additional costs incurred, plus an equitable time extension.

**14.04** If, without good cause, Owner/Developer shall fail for a period of twenty eight (28) calendar days after the due date to make payment on any approved Application for Payment, then Construction Manager shall serve Owner/Developer with written notice thereof, and, if Developer shall fail to make such payment, then this Agreement may be terminated by Construction Manager by written notice to Owner/Developer setting forth the date of termination, which date shall not be sooner than twenty eight (28) calendar days after the date of the notice. If, within said twenty eight (28) calendar day period, the matter giving rise to Construction Manager's right to terminate this Agreement shall not have been cured, this Agreement shall be deemed terminated for convenience and Construction Manager shall be compensated in the manner and to the extent set forth in Section 14.02 hereof.

**14.05** If it is determined by a court of competent jurisdiction that a termination under Section 14.01 was wrongful or unjustified, such termination shall be deemed a termination for the convenience of Owner/Developer under Section 14.02, and the sole right, remedy and recourse of Construction Manager against Owner/Developer shall be governed and determined by said Section 14.02.

## **ARTICLE XV**

**[Intentionally Omitted]**

## **ARTICLE XVI**

### **Management of the Work** **by Construction Manager and Owner/Developer**

**16.01** Construction Manager shall assign \_\_\_\_\_ as "Project Manager" and \_\_\_\_\_ as "Superintendent" to supervise performance of the Work. \_\_\_\_\_, \_\_\_\_\_, and an additional experienced project manager shall be assigned to the Project Management team and \_\_\_\_\_, \_\_\_\_\_ and an additional experienced Superintendent shall be assigned to the Field team.

**16.02** Construction Manager agrees that the Project Manager shall be assigned to the Work on a full-time basis. The Project Manager shall be stationed at Construction Manager's office and the Project Site until Substantial Completion of the Work in order to facilitate performance and completion of the Work in the most expeditious and economical manner consistent with the interests of Owner/Developer. In addition to the above-mentioned staff persons, Construction Manager shall also staff the Project with a team of persons approved in writing by Owner/Developer. It is expressly understood and agreed that with respect to the individuals named in Section 16.01, Construction Manager (a) shall remove, at the request

of Owner/Developer, any such person assigned to the Project that Owner/Developer deems unfit to perform the task assigned or otherwise finds objectionable, (b) shall propose substitutes, and obtain Owner/Developer's approval, for any such persons assigned to the Project who either cease to be in Construction Manager's employ or are removed from the Project by reason of Owner/Developer's request as aforesaid, and (c) shall not make any substitutions of such persons that have been approved by Owner/Developer without first obtaining Owner/Developer's prior approval, which approval shall not be unreasonably withheld.

**16.03** Owner/Developer hereby designates and appoints \_\_\_\_\_ and anyone else who, with prior notice to Construction Manager, Owner/Developer may designate or appoint, to act on behalf of said "Owner/Developer" hereunder. Any such approval or consent given by \_\_\_\_\_ shall be binding on Owner/Developer unless and until Construction Manager has received written notice from Owner/Developer of the designation or appointment of a successor to the foregoing.

## **ARTICLE XVII**

### **Consultants**

**17.01** Construction Manager understands that Owner/Developer intends to retain certain consultants ("Consultants") to furnish such services as may be designated by Owner/Developer in writing. Construction Manager hereby agrees that upon its receipt of written notice of the retention of such Consultants, accompanied by a designation of the nature of the services to be performed, Construction Manager shall recognize, and cooperate with, such Consultants to the end that their service may be performed in the best interests of Owner/Developer.

## **ARTICLE XVIII**

### **Insurance**

**18.01** The parties' insurance obligations under this Agreement are described in **Exhibit D** hereto. In the event Construction Manager maintains insurance limits greater than those required in **Exhibit D**, Owner/Developer and the Additional Insureds identified in **Exhibit G** shall be included therein as Additional Insureds to the fullest extent of all such insurance in accordance with all terms and provisions herein.

## **ARTICLE XIX**

### **Hazardous Materials**

**19.01** Construction Manager shall not cause or permit the Project or the Project Site to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations as required for completion of the Work. Construction Manager shall comply with and ensure compliance by all Trade Contractors, sub-Trade Contractors and vendor with all applicable federal, state and local

laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all Trade Contractors, sub-Trade Contractors and vendors obtain and comply with, any and all approvals, registrations or permits required thereunder. Construction Manager shall defend, indemnify, and hold harmless, Owner/Developer and all Indemnitees from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to Construction Manager's failure to perform its obligations under this Article XIX, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. For purposes of this Article XIX, "Hazardous Materials" include, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Superfund Amendments and Reauthorization Action of 1986 (PubL. No. 99-499, 100 stat. 1613 (1986)), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this Section shall be in addition to any and all other obligations and liabilities Construction Manager may have to Owner/Developer at common law, and shall survive Final Completion of the Work.

**19.02** Except as previously disclosed and agreed upon between Owner/Developer and Construction Manager, Construction Manager shall not be required to perform any Work in connection with, or in an area affected by, suspected or confirmed Hazardous Materials. Such Work shall be resumed as Owner/Developer and Construction Manager agree in writing, and only if (a) Developer causes remedial Work to be performed which results in the absence of Hazardous Materials or provides a proper certification to Construction Manager that materials suspected to be Hazardous Materials are, in fact, not Hazardous Materials; and (b) the Work may safely and lawfully proceed, as certified either by an appropriate governmental authority (receipt of an ACP-5, or equivalent) or by an environmental engineer reasonably satisfactory to both Owner/Developer and Construction Manager who shall submit a written report to both Owner/Developer and Construction Manager evidencing such certification (such engineer shall be retained and paid by Developer).

## **ARTICLE XX**

### **Materials and Equipment**

**20.01** As the Work progresses, title to each item of material or equipment shall vest in Owner/Developer upon the earlier to occur of (a) incorporation of such item into the Work, or (b) payment for such item by Owner/Developer. Each such item shall then become the sole property of Developer, subject to the right of Owner/Developer to reject the same at any time prior to Final Completion for failure to conform to the Contract Documents. Construction Manager shall be responsible for arranging and for insuring materials and equipment until the same are incorporated to the Work, as set forth in **Exhibit D** hereof, unless otherwise covered by Owner/Developer's builders risk insurance.

**20.02** Construction Manager shall require, each Trade Contractor to warrant that (a) title to all materials and equipment incorporated in the Work or paid for by Owner/Developer shall pass to

Owner/Developer free and clear of all liens, claims, security interests and encumbrances of every kind, and (b) that no materials or equipment covered by any Application for Payment will have been acquired by any other person performing work at the Project Site or furnishing materials and equipment in connection with the Work subject to an agreement under which an interest therein or an encumbrance thereon shall have been retained by the seller or otherwise imposed by seller or any other person.

**20.03** Except as otherwise agreed to as Owner/Developer-approved individual Trade Contract awards, it is not anticipated that Construction Manager will be paid for stored offsite materials (with the exception of long lead equipment). However, Owner/Developer, in its sole discretion, can elect to pay Construction Manager in accordance with this Section 20.03. In such event Construction Manager shall be entitled to arrange for the pre-purchase of certain materials and equipment to be incorporated in the Work provided that Owner/Developer shall have given its prior written consent thereto in each instance. If Owner/Developer shall have approved any such pre-purchasing of materials or equipment as aforesaid, Construction Manager shall pre-purchase the same in Owner/Developer's name, and on Owner/Developer's behalf. In such event, Owner/Developer shall advance seventy-five percent (75%) of the amount necessary to enable Construction Manager or its Trade Contractor to pre-purchase such materials or equipment upon presentation to Owner/Developer of a bill or statement therefor, together with any other documents as reasonably may be requested by Developer. Construction Manager, simultaneously with its receipt of any such advance from Owner/Developer, shall deliver to Owner/Developer a bill of sale with respect to the materials or equipment pre-purchased evidencing unencumbered title to the same in Owner/Developer's name, together with any warranties, certificates of insurance and other documents requested by Owner/Developer evidencing that such materials and equipment are covered by such insurance as shall have been specified by Owner/Developer.

(a) All materials and equipment pre-purchased as aforesaid shall be stored at the Project Site or at such off-Project Site storage locations as shall have been approved in writing in each instance by Owner/Developer. Any materials or equipment stored at such off-Project Site storage locations shall be segregated from materials and equipment of others, shall be clearly labeled to evidence Owner/Developer's ownership interest and shall otherwise be stored in such manner as directed by Owner/Developer. The risk of loss or damage to such materials and equipment shall remain with Trade Contractor as set forth in Section 20.01 hereof;

(b) All Trade Contracts, agreements, guarantees, or warranties executed or delivered in connection with materials and equipment which are pre-purchased by Construction Manager as provided herein shall provide that if, upon inspection of the same by Owner/Developer, Construction Manager or Architect, or if, upon incorporation of the same in the Project, Owner/Developer, Construction Manager or Architect determines that such materials or equipment, or any portion thereof, are faulty or defective in any respect, such materials or equipment, or portion thereof, shall be replaced, at such Trade Contractor's sole cost and expense, promptly after receipt of written notice to such effect from Owner/Developer, Architect or Construction Manager.

## ARTICLE XXI

### Substitutions

**21.01** The products, materials and equipment of manufacturers referred to in the Construction Documents are intended to establish the standard of quality and design required by Architect. Anything contained in the Construction Documents to the contrary notwithstanding, materials of manufacturers other than those specified may be used only if accepted by Owner/Developer as provided in this Article XXI.

(a) Architect, in consultation with Owner/Developer, shall be the judge of equivalency of proposed substitute materials. Architect shall make written recommendations of acceptance or rejection of substitute products, materials or equipment to Owner/Developer. Owner/Developer shall then authorize Architect to issue to Construction Manager written approval or rejection of the substitution. Construction Manager shall inform the appropriate Trade Contractor of said approval or rejection. Owner/Developer, in its reasonable discretion, may authorize rejection of a proposed substitution notwithstanding the fact that Architect may have judged it equivalent and recommended acceptance of the same.

**21.02** When two or more products are specified in the Construction Documents for an item of Work, any one thereof shall be deemed acceptable and Construction Manager shall have the choice as to which product to use.

(a) When only one product is specified in the Construction Documents for an item of Work and the term “or equal” is used in connection with such product, Construction Manager may offer a substitution by submitting a written application to Architect, in sufficient time (taking into account the progress of the Work, the period of delivery of the goods concerned and adequate time for Architect’s review), setting forth and fully identifying (i) the proposed substitute, together with substantiating data, samples, brochures and other supporting documentation of the substitute proposed, including, without limitation, evidence that the proposed substitution (w) is equal in quality and serviceability to the specified item, (x) will not entail changes in detail, schedule and construction of related Work, (y) conforms with the design of the Project and its artistic intent, and (z) will not result in an increase in the cost of the Work or alternatively, will result in a cost change as indicated in the application; and (ii) the changes in other parts of the Work required by reason of the proposed substitute, and the cost consequences associated therewith. A copy of any such application shall be delivered to Owner/Developer simultaneously with its delivery to Architect.

(b) When only one product is specified in the Construction Documents for an item of Work and the term “or equal” is not used in connection with such product, Owner/Developer, in its sole and absolute discretion may authorize the rejection of any substitution proposed by Construction Manager. Notwithstanding the foregoing, if the specified product shall become unavailable for a material period of time and Owner/Developer receives reasonably satisfactory proof from Construction Manager that the same shall be unavailable for reasons other than the failure of Construction Manager or a Trade Contractor to order such product in a timely manner, consistent with the Contract Documents and the scheduling requirements for the Work, then, in such event, Owner/Developer shall consent to such substitution, in

which event any change in costs incurred in connection with the use of such substitution shall be confirmed by a Change Order.

**21.03** Construction Manager shall support any request for a substitution with sufficient evidence to permit Architect to make a fair and equitable recommendation to Owner/Developer on the merits of the proposal. Any item by a manufacturer other than those cited in the Construction Documents, or of brand name, or model number or size or generic species other than those cited in the Construction Documents, shall be considered a substitution.

**21.04** Acceptance of substitutions shall not relieve the appropriate Trade Contractor from responsibility for compliance with all of the requirements of the underlying Contract Documents. If changes in other parts of the Work are required by reason of approved substitutions, the costs of any such changes shall be included in the cost of the Work.

**21.05** In no event shall the Progress Schedule be adjusted by any circumstance resulting from a proposed substitution, nor shall Construction Manager be entitled to any compensation related thereto, without the issuance of a Change Order approved by Owner/Developer in accordance with Article XXII hereof.

## **ARTICLE XXII**

### **Changes in the Work**

**22.01** A Change Order shall be the instrument required to authorize any change in the Project which would result in (a) a change in the Construction Documents or any other Contract Documents, (b) a deviation from design standards established for the Project or any part thereof, or (c) an extension of the Substantial Completion Date or the Final Completion Date from and after the date of the commencement of the Construction Phase, or (d) a change in the Contract Sum.

(a) Owner/Developer, without invalidating or abandoning this Agreement, may at any time require changes in the Work consisting of additions, deletions or other revisions. All such required changes in the Work shall be requested in writing by Owner/Developer (a "Request for Proposal"), shall be submitted to Construction Manager, and, in order to be deemed part of, or deleted from, the Work and authorized by Owner/Developer, shall be executed in the manner set forth below:

(i) Forthwith upon Construction Manager's receipt of a Request for Proposal, Construction Manager shall prepare and furnish to Owner/Developer a signed statement ("Proposal"), in a form satisfactory to Owner/Developer, setting forth in detail, with suitable breakdowns by trades and work classifications, and using the "unit price", lump sum, and/or other costing method specified by Owner/Developer, Construction Manager's estimate of (x) the cost, or savings, of the change reflected in the Request for Proposal, which cost shall reflect the most economical manner of affecting, such change, (y) the resulting increase or decrease in the cost of the Work, and (z) the changes in the Work or the Progress Schedule (including the Substantial Completion Date and the Final Completion Date) which would result from implementation of the Request for Proposal. If the changed Work is to be performed by

a Trade Contractor, the Proposal shall include a mark-up of no more than ten percent (15%) for overhead and profit for such Trade Contractor.

(ii) If Owner/Developer approves Construction Manager's Proposal, Owner/Developer shall issue to Construction Manager a written change order (the "Change Order") signed by Owner/Developer, and the Substantial Completion Date and the Final Completion Date, and the Contract Documents, as the case may be, shall be adjusted if required, in accordance with Section 3.04 above.

(b) Any work performed by Construction Manager or any Trade Contractor which is contrary to the Work as required by the Contract Documents, shall be performed at Construction Manager's or such Trade Contractor's sole risk, cost and expense, unless the same shall have been authorized by a Change Order, or an Emergency Change Order therefor shall have been confirmed by Owner/Developer by a duly issued Change Order, in accordance with Section 22.05 hereof.

**22.02** If Owner/Developer shall dispute any of the items set forth in the Proposal, then Owner/Developer shall give Construction Manager notice of such dispute, which notice shall set forth (a) those items in the Proposal which Owner/Developer disputes, (b) those items in the Proposal which Owner/Developer does not dispute, and (c) whether Owner/Developer desires that Construction Manager perform any portion of the change (i) corresponding to a non-disputed item, or (ii) corresponding to a disputed item.

(a) If Owner/Developer's dispute notice shall direct Construction Manager to perform any change corresponding to a non-disputed item, that portion of the Proposal which relates to the non-disputed item, together with Owner/Developer's direction to Construction Manager to perform the change corresponding to the non-disputed item, as set forth in Owner/Developer's dispute notice, shall constitute a validly issued Change Order, and Construction Manager shall promptly undertake to perform the same, subject to 22.01.

(b) If Owner/Developer's dispute notice shall direct Construction Manager to perform any change corresponding to a disputed item, Owner/Developer's dispute notice shall be deemed a notice of demand for prompt resolution of the subject matter of the dispute by the mutual agreement of the parties, failing which it shall be resolved as provided in Section 29.16 hereof. Notwithstanding the foregoing, Construction Manager shall promptly undertake to perform and pursue prosecution of the change corresponding to the disputed item during the pendency of any such bona fide dispute, and the determination reached by mutual agreement or rendered as provided in Section 29.16 relative to the disputed item, together with Owner/Developer's direction to Construction Manager to perform the change corresponding to the disputed item, as set forth in Owner/Developer's dispute notice, shall constitute a validly issued Change Order.

**22.03** When paid by Owner/Developer to Construction Manager in accordance with a validly issued Change Order, the compensation specified in a Change Order shall constitute full payment for the additional Work covered thereby and for any delay, disruption, cost, or expense occasioned by reason of



such change and shall release Owner/Developer from any further liability in respect of the same, unless Construction Manager expressly reserves such rights in writing in the written Change Order.

**22.04** No time extension shall be granted by reason of the issuance of any Change Order unless it is expressly stated therein.

**22.05** Anything contained herein to the contrary notwithstanding, Construction Manager and Architect shall have the authority to order “emergency changes” in the Work, without the prior written approval of Owner/Developer, by the issuance of a written order (an “Emergency Change Order”). For purposes of this Agreement, “emergency changes” in the Work shall mean only changes which are required in the case of an emergency to ensure the safety of persons or the Work and which, in the interest of expediency, Construction Manager determines should be made without obtaining the prior written approval of Owner/Developer. Construction Manager shall (a) notify Owner/Developer that it has issued an Emergency Change Order within forty-eight (48) hours after the same has been issued, which notification shall set forth the reason giving rise to the issuance of the same, and (b) promptly furnish Owner/Developer with copies of all such Emergency Change Orders. Valid Emergency Change Orders shall be confirmed by Owner/Developer by a duly issued Change Order.

## **ARTICLE XXIII**

### **Inspection and Testing**

**23.01** If the underlying Contract Documents or any laws, rules, ordinances or regulations of any federal, state or local governmental authorities having jurisdiction over the Work require that any Work be inspected or tested, Construction Manager shall give Owner/Developer and Architect timely notice of readiness of the Work for inspection or testing and the date fixed for such inspection or testing. Owner/Developer or Consultants shall perform all controlled inspections.

**23.02** Whenever, in the opinion of Owner/Developer, it is desirable to require special inspection or testing of the Work or its individual components, Owner/Developer shall have authority to do so whether or not such Work is then fabricated, installed, covered or completed. All costs incurred in connection with such special inspection or testing shall be a Reimbursable Cost by the issuance of a Change Order unless it reveals a test failure as a result of the acts or omissions of Construction Manager in which event, Construction Manager shall bear, all costs of such special inspection or testing. All Trade Contracts shall provide that if a test failure is a result of the acts or omissions of a Trade Contractor then that Trade Contractor shall bear, at its sole cost and expense, all such costs of special inspection or testing. No inspection performed or failed to be performed by Owner/Developer hereunder shall be deemed a waiver of any of Construction Manager’s obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

(a) In the event of a test failure of any item of the Work, Owner/Developer may require inspection or testing of any or all of the other similar items of the Work. The costs and expenses incurred by Construction Manager in connection with such inspection or testing set forth in this Section 23.02(a) shall be a cost of the Work unless (i) the test failure prompting such additional testing or inspection was a

result of the acts or omissions of Construction Manager or the failure of Construction Manager to comply with the provisions of this Agreement, or (ii) such additional testing or inspection results in a test failure which results from the acts or omissions of Construction Manager, in which event, Construction Manager shall bear, at its sole cost and expense, all costs of such additional inspection or testing. All Trade Contracts shall provide that in the event of a test failure of any term of the Work the costs and expenses incurred in connection with such testing or inspection shall be borne by the responsible Trade Contractor.

**23.03** If any Work shall be covered or concealed by Construction Manager or permitted to be covered or concealed by Construction Manager, contrary to the written request of Owner/Developer or Architect or the Contract Documents, such Work, if required by Developer or Architect, shall be uncovered for examination, inspection or testing at Construction Manager's sole cost and expense. If any such test results are below specified minimums, Owner/Developer may order additional examination, testing or inspection. Such additional examination, inspection or testing shall be at Construction Manager sole cost and expense if Construction Manager knew of such request and failed to advise the appropriate Trade Contractor. Should Architect or Owner/Developer have reason to believe that defects exist in any Work which has already been covered or concealed, although no request not to cover or conceal such Work had been previously made by Owner/Developer or Architect, such Work, if required by Owner/Developer, shall be promptly uncovered by Construction Manager and subjected to such tests, inspection or examination as may be deemed appropriate by Owner/Developer or Architect. In such case, the provisions of Section 23.02(a) shall control with respect to the costs associated with such uncovering.

**23.04** Any Work not approved by Owner/Developer or Architect in accordance with the terms of this Agreement shall immediately be reconstructed, made good, replaced or corrected by Construction Manager, the responsible Trade Contractor, or another Trade Contractor to be retained by Construction Manager, including portions of the Work destroyed or damaged by such removal or replacement, at Construction Manager's or the responsible Trade Contractor's sole cost and expense, to the extent the same is caused by, or results respectively from, Construction Manager's or its Trade Contractors' acts or omissions or the failure of either of the foregoing to comply with the provisions of this Agreement or the Trade Contract, respectively. All rejected materials shall be removed from the Project Site, within a reasonable period of time. Acceptance of materials and workmanship by Owner/Developer shall not relieve Construction Manager or any Trade Contractor from their liability for or obligation to replace all Work which is not in full compliance with the underlying Contract Documents.

**23.05** At Owner/Developer's option, Owner/Developer may accept defective or nonconforming Work or materials, instead of requiring its removal, correction or replacement, as the case may be, and a Change Order shall be issued to reflect a reduction in the Trade Contract price, in an amount equal to the aggregate cost of labor and materials which would have been incurred by the responsible Trade Contractor if Owner/Developer had required said Trade Contractor to repair or replace such defective nonconforming Work in accordance with the terms of the Trade Contract. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE XXIV**

### **Ownership and Use of Documents; Confidentiality**

**24.01** Construction Manager agrees that the Contract Documents, technical data and other information received by it from Owner/Developer, Architect and Consultants under or in connection with this Agreement and any and all other information concerning Owner/Developer or Owner/Developer's operations that Construction Manager may obtain or become aware of shall be accepted and treated as proprietary information which has a substantial commercial value to Owner/Developer, and that Construction Manager will not use or disclose any such Contract Documents, technical data and other information in any manner except to the extent that such use or disclosure may be necessary for the performance of the Work hereunder. Without limitation of the foregoing, all said documents furnished to Construction Manager are to be used only with respect to this Project and are not to be used on or in connection with any other project.

**24.02** Except as otherwise provided herein, Construction Manager is specifically prohibited from photographing any portion of the Work for publicity and advertising or for any other purpose without the prior written permission of Owner/Developer, which shall not be unreasonably withheld.

**24.03** The requirements of this Article shall survive the expiration or termination of this Agreement and shall be binding upon Construction Manager. Construction Manager shall include the requirements of this Article in all Trade Contracts.

## **ARTICLE XXV**

### **Nondisclosure**

**25.01** Without limitation of the provisions of Article XXIV hereof, it is agreed that neither Construction Manager nor any Trade Contractor shall divulge information concerning the Project or concerning Developer or Developer's operations to anyone without Developer's prior written consent, except as otherwise specifically permitted by the Contract Documents and except such public disclosures as may be required by law. If such disclosure is required by law, Construction Manager or any Trade Contractor in question shall provide Developer with a copy of any such proposed public disclosure in advance and will endeavor to incorporate any comments Developer may suggest in such regard. Construction Manager shall however, be entitled to describe the Project in its brochures and proposals without Developer's prior consent provided no confidential information is disclosed.

**25.02** Except as required by law no signs advertising the Work to be performed by Construction Manager or any Trade Contractor or identifying any person, firm or entity concerned with the Work to be performed by Construction Manager or any Trade Contractor shall be allowed at the Project Site or elsewhere unless approved in writing by Developer in advance, which approval for Project signage shall not be unreasonably withheld.

## **ARTICLE XXVI**

### **Separate Contractors**

**26.01** Owner/Developer has the right to self-perform Work, and/or award contracts to separate contractors to perform all or any portion of the Project,. Construction Manager shall provide coordination and shall cooperate with separate contractors hired by the Developer.

**26.02** If Construction Manager causes damage to the property of Owner/Developer or to other work or property on the Project Site, Construction Manager shall promptly remedy such damage as provided in this Agreement.

**26.03** If Construction Manager delays or causes damage to the work or property of any separate contractor, Construction Manager shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute.

**26.04** The requirements of this Article shall be included in all Trade Contracts.

## **ARTICLE XXVII**

### **Equal Opportunity**

**27.01** Construction Manager shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, age or gender. Construction Manager shall (a) assure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination, (b) take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to, race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, age or gender, and (c) comply with all applicable federal, state and local laws regarding non-discrimination. Construction Manager shall include this obligation in all Trade Contracts.

## **ARTICLE XXVIII**

### **Claims for Damages**

**28.01** No action or proceeding shall lie or be maintained by Construction Manager against Developer, City or any Indemnatee upon any claim arising out of or based upon the Contract Documents or by reason of any act or omission or any requirements relating to the giving of notices or information, unless such action or proceeding shall be commenced within one (1) year after the Final Completion of the Work or, this Agreement is earlier terminated, within one (1) year following the date of such earlier termination. This limitation shall not limit Construction Manager's right to seek indemnification or contribution from Developer in actions commenced by third parties. This Article XXVIII shall not be deemed or construed to modify any other provision hereof relating to waivers of claims by Construction

Manager. Construction Manager shall cause each Trade Contract to contain like provisions to this Article XXVIII and a provision requiring like provisions to be contained in subcontracts of any tier.

## **ARTICLE XXIX**

### **Additional Provisions**

**29.01 Practice of Architecture and/or Engineering.** Nothing contained in this Agreement shall be deemed to require or authorize Construction Manager to perform or do any acts which would be deemed the practice of architecture or engineering within the meaning of the laws of the State where the Project is located. Such limitation shall not apply to design and engineering services properly delegated pursuant to the laws of the State where the Project is located.

**29.02 Effectiveness of Agreement.** This Agreement, when executed by the parties, shall be effective as of the date first stated above in this Agreement. Any and all Work performed by Construction Manager heretofore in anticipation of entering into this Contract are hereby merged into this Contract and shall be governed by the terms and conditions set forth herein. All understandings and agreements heretofore had among Construction Manager and Developer with respect to the Project are merged into, or superseded by, this Agreement. This Agreement fully and completely expresses the agreement of the parties with respect to the Work and the Project and shall not be modified or amended except by written agreement executed by each of the parties hereto. Construction Manager understands and agrees that no representations of any kind whatsoever have been made to it other than as appear in this Agreement, that it has not relied on any such representations and that no claim that it has so relied on may be made at any time and for any purpose.

**29.03 Enforcement of Trade Contracts.** Construction Manager covenants and agrees that it shall diligently enforce all of the terms, conditions and provisions of each of the Trade Contracts. In addition, Construction Manager agrees to assume toward Developer, and shall be responsible to Developer for, the performance by the Trade Contractors of all of the Trade Contractors' Work under the Trade Contracts, with the same force and effect as if Construction Manager itself shall have contracted to perform such Work, but subject to Construction Manager's obligations and duties set forth herein.

**29.04 Cooperation with City.** Construction Manager shall cooperate with City and its representatives at all times in the course of the performance of the Work, shall issue such certifications as City may reasonably require from time to time, and any changes or modifications reasonably requested by City to this Agreement which do not increase Construction Manager's cost or shift the allocation of responsibility and/or liability shall be agreed to by Construction Manager and this Agreement shall be deemed amended, at the option of Owner/Developer, by written agreement, to include such changes or modifications.

**29.05 Access and Cooperation.** Construction Manager agrees (a) to grant Owner/Developer, Architect, City and Consultants access to the Work whenever same is in progress, and (b) to cooperate with Owner/Developer, Architect, Lender and Consultants throughout the performance of the Work to the end that the Project may be completed in the most expeditious and economic manner and in furtherance of the

interests of Owner/Developer. The exercise of said rights of access shall at all times be done in a lawful manner and in accordance with the safety regulations of the Construction Manager established for the Project.

**29.06 Performance of Work during the Pendency of Disputes.** Unless the parties hereto expressly agree otherwise in writing, in the event that a bona fide, good faith dispute shall arise under this Agreement in connection with payments to be made on any Application for Payment, or otherwise, Construction Manager shall continue during the pendency of such dispute to perform its duties and responsibilities under this Agreement and the Work in accordance with Owner/Developer's directives and shall, in connection therewith, maintain the Construction Budget and the Progress Schedule, the Substantial Completion Date and the Final Completion Date and shall perform all other obligations required to be performed by it under this Agreement as if no dispute shall have arisen. During the pendency of any such dispute, and except as otherwise provided in this Agreement, Construction Manager shall be entitled to receive payments from Owner/Developer only on account of non-disputed items and payments on account of disputed items shall be deferred until the final resolution of the dispute.

**29.07 Notices.** All notices hereunder shall be submitted (a) via the e-Builder construction program management software for the Project (or such other electronic document control system directed by Developer); and (b) in writing and personally delivered or sent by registered or certified mail, postage prepaid, or sent by a nationally recognized overnight courier service, addressed as follows:

If to Owner/Developer, addressed to:

44 MONTGOMERY STREET SUITE 1300  
SAN FRANCISCO, CA, 94104  
Attention: [TBD]

With a copy to:

Real Estate Division  
City & County of San Francisco  
25 Van Ness, Suite 400  
San Francisco, CA 94102  
Attention: Director of Property  
Re: Fire Station 13 @ 447 Battery  
Telephone: (415) 554-9860

If to Construction Manager, addressed to: [TBD]

[TBD]  
[TBD]  
Attention: [TBD] and via email at:  
[TBD]

With a copy to:  
[TBD] via email at:  
[TBD]

Either party may change the address or addresses to which notice shall be delivered under this Agreement by giving notice in accordance with this Article.

**29.08 Construction of Language.** The language in this Agreement shall be construed according to its customary meaning within the building industry. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

**29.09 Captions and Titles.** Captions and titles of the different Articles and Sections of this Agreement are solely for the purpose of aiding and assisting in the location of different material in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

**29.10 No Waiver.** The failure of either party to insist upon the strict performance of any provisions of this Agreement, the failure of either party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by either party of any act by the other party requiring such party's consent or approval shall not be construed to waive or render unnecessary the requirement for that party's consent or approval of any subsequent similar act by the other party. The payment by Developer of any amount due hereunder with knowledge of a breach of any provision of this Agreement shall not be deemed a waiver of such breach. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

**29.11 Indemnification.**

(a) To the fullest extent permitted by law, Construction Manager shall defend, indemnify and hold harmless Owner/Developer, City and all entities listed on **Exhibit G** and their respective officers, partners, principals, members, managers, shareholders, directors, employees, successors, and assigns (collectively, "Indemnitees", individually, "Indemnatee") from and against all losses, claims, costs, damages, and expenses (including, without limitation, the deductible amounts of any insurance and attorneys' fees and disbursements), arising or alleged to arise out of or result from the Work, including (i) personal injury, sickness, disease or death, or damage or injury to, loss of or destruction of property (including tools, equipment, plant and the buildings at the Project Site, but excluding the Work itself) including the loss of use resulting therefrom sustained or purported to have been sustained as a result of performance of the Work attributable to any act or omission of Construction Manager, its employees, Trade Contractors, representatives or other persons for whom Construction Manager is responsible who are at the Project Site at any time during the period of the Work is being performed, and (ii) provided

Developer has paid Construction Manager for Work performed by Trade Contractors and suppliers, any lien or notice of lien filed by any such Trade Contractor or supplier against the property in connection with the Work. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any Indemnitee. Construction Manager shall not be obligated under this Agreement to indemnify for Claims arising from the active negligence or willful misconduct of the Indemnified Parties. The indemnification provisions shall not be construed to require indemnification by Construction Manager to a greater extent than permitted under California Civil Code Section 2782 or under any other applicable statute or pursuant to relevant public policy of the State of California.

(b) In and all claims against any Indemnitee by any employee of Construction Manager, or of its Trade Contractors or anyone directly or indirectly employed by either Construction Manager or its Trade Contractors or anyone for whose acts either Construction Manager or its Trade Contractors may be liable, the indemnification obligation under this Section 29.11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Construction Manager under workers' or workmen's compensation acts, disability acts or other employee benefit acts.

**29.12 Severability.** If any provision of the underlying Contract Documents is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of the underlying Contract Documents and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby. Each provision of the underlying Contract Documents shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law.

**29.13 Duty Same as Covenant.** Whenever in this Agreement any words of obligation or duty regarding any party are used, they shall have the same force and effect as those in the form of express covenants.

**29.14 Architect and Consultants.** All references in this Agreement to Architect or Consultants shall be deemed to mean any person or entity designated from time to time by Developer to serve in such capacity.

**29.15 Rights and Remedies.** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation upon, any of the duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

**29.16 Governing Law and Dispute Resolution.**

(a) This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, without regard to its conflicts of laws rules.

(b) Any dispute, claim, controversy or action (collectively, "Dispute") arising directly or indirectly out of, or in any way relating to the Agreement shall first be reviewed through Senior Management Meetings. If resolution is not reached, then Dispute shall be submitted to JAMS for mediation by the parties before a mutually agreeable mediator prior to commencing any legal action with respect to



the Dispute and within ninety (90) days of Construction Manager or Developer first giving the other written notice of a dispute. However, where the parties do not have reasonably adequate time to complete mediation prior to the expiration of any applicable statute of limitations, the parties may commence litigation to protect the statute but will otherwise be bound to mediate in good faith as required by this paragraph as soon as practical. Further, it shall be considered a breach of this Agreement for a party to fail to cooperate in conducting mediation. In the event of such breach, the non-breaching party shall be excused from this mediation provision.

(c) Any Dispute arising directly or indirectly out of or in any way relating to the Agreement and not resolved at mediation in accordance with Section 29.16(b) shall be resolved by a general judicial reference pursuant to California Code of Civil Procedure Section 638 and all successor and applicable court rules and provisions of law. The judicial referee shall be a JAMS neutral, shall determine all issues of fact and law, whether legal or equitable, and shall conduct the proceedings in compliance with all rules of the court and all statutory and decisional law of the State of California as if the matter were formally litigated in the Superior Court. The judicial reference hearing must commence within one (1) year of the Construction Manager or Developer commencing the judicial reference. The cost of the judicial referee shall be borne pro rate by the parties. This judicial reference agreement is mandatory and shall be specifically enforceable by complaint, petition or motion pursuant to applicable court rules and provisions of law. The parties consent to the exclusive jurisdiction and venue of the state court located in the State of California and the County of San Francisco, and waive any right to remove to the federal court on the basis of diversity jurisdiction or otherwise. The parties may apply to the state court located in the State of California and the County of San Francisco for injunctive or other prejudgment relief only prior to the appointment of the judicial referee, with all such proceedings to be handled by the judicial referee after appointment. Construction Manager shall include a similar dispute resolution provision in each Trade Contract. The parties agree to permit joinder of any judicial reference commenced between them with that of any judicial reference involving the Architect, a Trade Contractor(s), or other consultant(s) or design professional(s) where the claims involve the same nexus of facts.

(d) To the extent permitted by law, Construction Manager waives knowingly and voluntarily for itself and all persons claiming by or through it, all right to trial by jury in any legal proceedings.

**29.17 Binding Effect.** It is expressly understood by the parties hereto that delivery by Developer of the within Agreement for review and execution by Construction Manager shall confer no rights nor impose any obligations on either party, unless and until both Construction Manager and Developer shall have executed this Agreement.

**29.18 Interpretations in Writing.**

(a) Any and all interpretations of Contract Documents or of any of the Work to be performed or payments to be made relative to the Project must be in writing to be valid.

(b) This provision is not intended to prohibit or deny normal discussion, recommendations, explanations, suggestions, approvals, rejections, and similar activity in pursuit of the

Work at the Project on an oral basis, such as at job conferences at the Project Site. In such instances, the written minutes, correspondence, shop drawing records, and other written data shall govern over personal claims regarding oral statements made contrary to the written data.

**29.19 Prohibited Interests.** No principal, officer, shareholder, family member, employee, agent or consultant of Construction Manager who, on behalf of Construction Manager, negotiates, makes, accepts, or approves, or takes part in negotiating, making, accepting, or approving any Trade Contractor or any Trade Contract or other agreement entered into by Construction Manager in connection with the Work, shall become directly or indirectly interested personally or financially in the Trade Contractor or any Trade Contract or such other agreement.

**29.20 Integrity and Ethical Conduct.** Construction Manager acknowledges and understands that Developer is committed to have the Work performed in accordance with the highest ethical standards applicable to, or governing, the conduct of construction practices. In furtherance thereof, Construction Manager hereby agrees to comply with and observe all applicable federal, state and local laws, rules, regulations, requirements, trade standards and ethical guidelines governing said conduct.

**29.21 Independent Contractor.** It is expressly understood and agreed by the parties hereto that Construction Manager, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent of Developer. Nothing contained in this Agreement shall be construed to mean that Construction Manager and Developer are joint ventures or partners.

**29.22 Liability of Construction Manager – Consequential Damages.** Construction Manager shall have no liability to Developer or City for any type of special, consequential or incidental damages arising out of or connected with Construction Manager's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under this Contract, and negligence or strict liability of Construction Manager. This limit of liability shall NOT, however, apply to, limit or preclude: (i) Construction Manager's obligation to pay Liquidated Damages as set forth in the Contract Documents; (ii) damages caused by Construction Manager's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts; (iii) Construction Manager's obligations to indemnify and defend the City and other indemnified parties as set forth in this General Conditions; (iv) Construction Manager's liability for any type of damage, including but not limited to, business interruption and extra expense, to the extent such damage required to be covered by insurance as specified in the Contract Documents; (v) wrongful death caused by Construction Manager; (vi) punitive or treble damages; (vii) Construction Manager's liability for damages as expressly provided for in the Contract Documents, including without limitation statutory damages imposed by the City upon Construction Manager under the City Ordinances and Municipal Codes specified in the Contract Documents; and (viii) Construction Manager's warranties and guarantees under the Contract Documents.

**29.23 Drafting.** The parties specially acknowledge that this Agreement has been mutually negotiated and that each party has contributed to its content. To the extent that any inconsistency or ambiguity arises in the Contract Documents, both parties acknowledge that there shall be no construction against either party as drafter.

**29.24 Patriot Act Compliance.** Construction Manager hereby represents and warrants that: (a) it is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury (“OFAC”) pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, “Specially Designated National and Blocked Person” or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a “Prohibited Person”); (b) it is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (c) from and after the effective date of the above-referenced Executive Order, it (and any person, group, or entity which it controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation any assignment of this Agreement or the making or receiving of any contribution of funds, good or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In connection with the foregoing, it is expressly understood and agreed that (i) any breach by Construction Manager of the foregoing representations and warranties shall be deemed a default and breach by Construction Manager hereunder and shall be covered by the indemnity provisions of this Agreement, and (ii) the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Agreement. In addition, Construction Manager agrees that it shall in all respects and to the extent applicable comply with all other rules, regulations, laws and legally binding directives of any governmental instrumentality having jurisdiction over Construction Manager and related to the discovery, control or limitation of any terrorist or subversive activity.

**29.25 Accessibility.**

(a) Construction Manager shall comply with all federal state, and local accessibility requirements that apply to the Project, as set forth in the Contract Documents, including but not limited to the Americans with Disabilities Act, 42 U.S.C. 12181 et seq. (“ADA”), the Fair Housing Act, 42 U.S.C. 3601 et seq. (“FHA”), their implementing regulations, and the Standard. For purposes of this Contract, the “Standard” shall mean one of the following standards, as directed by Developer in writing prior to commencement of Work hereunder: (i) the Fair Housing Accessibility Guidelines, Design Guidelines for Accessible/Adaptable Dwellings, 56 Fed. Reg. 9472 (Mar. 6, 1991) (“Guidelines”); (ii) a standard designed as an FHA safe harbor by the United States Department of Housing and Urban Development; or (iii) a recognized, comparable objective standard of accessibility that has been found by the United States District Court for the Southern District of New York or the United States Court of Appeals for the Second Circuit to incorporate the requirements of the FHA.

(b) Construction Manager acknowledges that Developer shall retain an FHA compliance consultant (the “Accessibility Consultant”) to help ensure that the as-constructed features at the Project comply with the following: (i) the public use and common use portions of the Project are readily accessible to and usable by persons with a disability; (ii) all the doors designed to allow passage into and within all premises within the Project are sufficiently wide to allow passage by persons with a disability using wheelchairs; (iii) all premises within the Project contain the following features of adaptive design: (w) an accessible route into and through the dwelling; (x) light switches, electrical outlets, thermostats, and

other environmental controls in accessible locations; (y) reinforcements in bathroom walls to allow later installation of grab bars; and (z) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space (these provisions and features are referred to herein as the “Accessible Design Requirements”). Construction Manager shall fully coordinate and cooperate with the Accessibility Consultant and keep the Accessibility Consultant apprised concerning the Work. Where applicable to the Work, Construction Manager shall seek the Accessibility Consultant’s advice regarding the location of appliances (e.g., refrigerators and ranges) and fixtures (e.g., doors, thresholds, and lavatories); the effect of deviations from the Construction Documents on the accessibility of conditions at the Project; as well as other issues that arise during construction that affect accessibility. Prior to completion of the Project, Developer shall arrange for the FHA Consultant to conduct a visit of the Project to identify any construction issues that may result in inaccessible conditions and recommend appropriate solutions, and Construction Manager agrees to cooperate with Developer and the Accessibility Consultant in connection with such inspection.

(c) In addition, Construction Manager acknowledges that governmental authorities having jurisdiction over the Work shall be permitted full access to the Project to inspect for compliance with the accessibility requirements set forth herein. If Construction Manager is or becomes aware of (i) any applicable accessibility requirements that are not accurately reflected in the Work, the Contract Documents or the Project; (ii) any lack of compliance with accessibility requirements in the Work; or (iii) any discrepancy between actual field conditions and shop drawings that conform to applicable accessibility requirements, Construction Manager shall notify Developer promptly thereof.

(d) Construction Manager shall maintain, and shall require its Trade Contractors to maintain, all records related to the compliance of the Project’s design and construction with the ADA, the FHA, the Accessible Design Requirements and the Standard. Upon reasonable notice from Developer, these records shall be available at Construction Manager’s office during business hours for audit and copying by Developer and/or governmental authorities having jurisdiction over the Work. Construction Manager shall retain these records for six (6) years after its receipt of final payment.

**29.26 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which, together, shall constitute one agreement. Electronic and/or facsimile signatures of this Agreement shall be deemed originals for all purposes.

**29.27 Use of Drones.** Construction Manager shall not use and shall prohibit all Trade Contractors from using aircraft, including drones in performing the Work.

[Signatures to Follow on Next Page]

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

DEVELOPER:  
[TBD]

CONSTRUCTION MANAGER:  
[TBD]

By: \_\_\_\_\_  
Name: [TBD]  
Title: [TBD]

By: \_\_\_\_\_  
Name: [TBD]  
Title: [TBD]

**EXHIBIT A**

**LIST OF CONSTRUCTION DOCUMENTS**

[TO BEGIN ON FOLLOWING PAGE]

**EXHIBIT B**

**FORM OF TRADE CONTRACT APPROVAL LETTER**

TO:

DATE:

RE:

Sir/Madam:

We have received bids for the \_\_\_\_\_ work ("Work") to be performed in accordance with plans and specifications issued by \_\_\_\_\_ and our request for proposal as follows:

TRADE CONTRACTOR

FINAL PRICE

COMMENT

Our budget for this Work is:

We recommend that the Trade Contract for the Work be awarded to: \_\_\_\_\_  
("Trade Contractor") In the amount of \$ \_\_\_\_\_ ("Trade Contract Price").

Set forth below are the material differences between the Trade Contract we intend to execute and the Trade Contract Form. [List differences]

Please sign the enclosed duplicate of this letter or send us another letter in order to authorize finalizing a Trade Contract ("Trade Contract") with the recommended Trade Contractor for the above stated Trade Contract Price and return said duplicate to us for our records. After our execution of the Trade Contract, we will submit copies to you for your records.

If you have any questions, please contact the undersigned immediately.

Very truly yours,

[\_\_\_\_\_]

By:

Name:

Title:

Award Approved:

[\_\_\_\_\_]

By:

Its:

**EXHIBIT C**

**GENERAL CONDITIONS WORK ITEMS**

[TO BEGIN ON FOLLOWING PAGE]



## EXHIBIT D

### INSURANCE REQUIREMENTS

1. Owner/Developer and/or its affiliates will arrange to insure the Project under a Developer Controlled Insurance Program ("OCIP") with commercial general liability limits of not less than \$50,000,000, with a per occurrence deductible not to exceed \$25,000. Owner/Developer shall be responsible for any deductible above \$25,000. Construction Manager shall not owe Developer any credits for any insurance purchased by Owner/Developer pursuant to the Contract Documents. The OCIP will provide commercial general liability coverage only. The OCIP is limited to coverage for onsite work. With respect to all on site work, Construction Manager shall purchase and maintain, at a minimum, the insurances listed below in Sections 1.1 through 1.6, as qualified in Sections 2 through 10, except for the commercial general liability coverage as described in section 1.3, as will protect Construction Manager, Owner/Developer, an Owner/Developer's respective officers, directors, shareholders, affiliates, partners, agents and employees from the claims set forth below which may arise out of or as a result of Construction Manager's obligations under this Agreement (whether such obligations be performed by it or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable). With respect to all off-site work, and for all Trade Contractors not enrolled in the OCIP, Construction Manager shall purchase and maintain, at a minimum, the insurances listed below in Sections 1.1 through 1.6, as qualified in Sections 2 through 10. as will protect Construction Manager, Owner/Developer, and Owner/Developer's respective officers, directors, shareholders, affiliates, partners, agents and employees from the claims set forth below which may arise out of or as a result of Construction Manager's obligations under this Agreement (whether such obligations be performed by it or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable ):

#### 1.1 Worker's Compensation/Employer's Liability/Disability

- (i) Statutorily required policy limits covering claims under Worker's Compensation, Disability Benefits and other similar employee benefit acts which are applicable to the services to be performed by Construction Manager.
- (ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of Construction Manager's employees under any applicable employer's liability law in an amount not less than that required under applicable state law.

#### 1.2 Comprehensive Automobile Liability

Claims for damages because of bodily injury or death of any person or property damage arising out of the delivery, maintenance or use of any motor vehicle in an amount not less than \$1,000,000 combined single limit.

Above to include employer's non-owned and hired car coverage.

### 1.3 Commercial General Liability

- (i) Claims for damages due to bodily injury or death of any person other than its employees.
- (ii) Claims for damages other than to the Work itself, due to injury to, or destruction of, tangible property, including loss of use therefrom.
- (iii) Written on an occurrence form with limits of \$1,000,000 each occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products/Completed Operations Aggregate. The policy shall identify Developer, lender (if applicable) and all entities listed on Exhibit G as additional insureds. The policy should be endorsed with a “Per Project” aggregate. Including, but not limited to:

Comprehensive Form, Premises - Operation, Explosion, Collapse, Underground Hazard, Products/Completed Operations Hazard covering the period of the longest California statute of repose for construction defects, Blanket Contractual Coverage (including coverage for the Indemnity Clauses provided under this Agreement), Broad Form Property damage, Independent Contractors, Personal Injury (employees exclusion deleted). Specific extension of coverage for Railroad Operations (Revise CGL Policy Form Section V, Definitions, Item 9 “Insured Contract” by endorsing the General Liability Policy with ISO form CG 2417—Contractual Liability - Railroads). The only Additional Insured endorsements accepted will be the tandem of XIL 20 10 (7/04) and CG 20 37 (7/04) or the single edition of XIL 20 10 (11/85).

### 1.4 Umbrella Liability

With total limits of \$10,000,000.00 each occurrence and in the aggregate, with a \$10,000,000.00 Products Completed Operations aggregate. These limits will sit excess of Sections 1.1, 1.2 and 1.3. Additionally, the limits will be endorsed as “Per Project”. Products/Completed Operations coverage shall be extended and maintained for the longest California statute of repose for construction defects, with additional insured status for Developer, lender (if applicable) and all entities listed on Exhibit G.

### 1.5 Project Specific Pollution Liability

As applicable to the Work to be performed, covering claims from third- party injury and property damage as a result of pollution conditions emanating on-site, under site or off site, arising out of Construction Manager’s operations and completed operations. Completed operations coverage shall remain in effect for no less than ten (10) years after Final Completion. Minimum liability limits, including excess liability coverage shall be \$10,000,000.00 each occurrence and \$10,000,000.00/in the aggregate. The policy shall identify Developer, lender (if applicable) Construction Manager and all Trade Contractors as additional insureds.

The cost of the Project Specific Pollution policy is a Reimbursable Cost which is not included in Construction Manager's ...44% charge for Construction Manager provided insurance. If purchased by Contractor, the cost of the Project Specific Pollution policy shall be charged at the actual cost incurred and shall be paid by Developer in Construction Manager's First Application for Payment.

#### 1.6 Errors and Omissions

For all Work relating to the design of portions of the Project such as design-build and design-assist work of Trade Contractors, Construction Manager shall be required to provide or require the Trade Contractor provide Errors and Omissions/professional liability insurance with limits no less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

2. The insurances enumerated in Sections 1.1 through 1.5 but not 1.6, shall, without liability on the part of Owner/Developer, or Lender (if applicable) for premiums therefor, include an endorsement identifying the following as Additional Insureds: Owner/Developer, Lender (if applicable) and all entities listed on **Exhibit G** and their respective partners, directors, officers, employees, agents and representatives.
3. All binders and policies of insurance delivered to Owner/Developer shall contain an agreement by the company issuing said policy to give Owner/Developer and the Additional Insureds thirty (30) days advance written notice of any cancellation, lapse, nonrenewal, reduction or other adverse change respecting such insurance.
4. Construction Manager shall before the commencement of any provision of this Agreement file certificates and General Excess Liability Binders with Owner/Developer as outlined to show existence of such insurance, which insurance shall be subject to Owner/Developer's approval as to the adequacy of protection and compliance with this Agreement and the satisfactory character of the Insurer. Such insurance shall be placed with reputable insurance companies licensed to do business in the State where the Project is located with a minimum Best's rating of "A-VIII". General and Excess Liability Binders shall be submitted within ninety (90) days after commencement of the Work.
5. Any type of insurance or any increase of its limits of liability not described above which Construction Manager requires for its own protection or required by statute shall be its own responsibility and at its own expense.
6. The carrying of the insurance described shall in no way be interpreted as relieving Construction Manager of any responsibility or liability under this Agreement. In the event Construction Manager fails to maintain the coverages or limits as required herein, Owner/Developer may affect such insurance as an agent of Construction Manager. Any premiums paid therefore, by Owner/Developer to affect such coverage shall be payable by Construction Manager or offset by or against the fees herein provided or payable to Construction Manager.

7. Owner/Developer shall purchase and maintain property insurance upon the entire Work at the Project Site to the full insurable value thereof, with a deductible not to exceed \$25,000. This insurance shall be written on an "all-risk" or similar form basis and include the interest of Developer and Construction Manager (and all Trade Contractors) in the Work and shall insure against any and all loss to the Work, the Project, the Project Site, temporary works and falsework and any existing property, buildings, dwellings or land on the Project Site resulting from fire and other perils, theft, vandalism, earthquake, flood, water damage, subsidence, and malicious mischief, it being expressly understood, however, that this insurance shall exclude tools, contractor's equipment, supplies and other similar personal effects owned or rented by Construction Manager or any Trade Contractor. Developer shall be responsible for the deductible above \$25,000.
8. Any loss insured under Paragraph 7 of this Exhibit D is to be adjusted with Owner/Developer and made payable to Owner/Developer as trustee for the insureds, as their interests may appear, subject to the requirements of any mortgagee clause.
9. Owner/Developer and Construction Manager waive all subrogation rights against each other for damages covered by any Project specific insurance on the Project. Construction Manager shall require similar waivers in favor of Owner/Developer and Construction Manager by Trade Contractors and sub-trade contractors.
10. The carrying of the insurance described herein shall in no way be interpreted as relieving Owner/Developer of any responsibility or liability under this Agreement unless expressly stated otherwise herein. In the event Owner/Developer fails to maintain the coverages or limits as required herein, Construction Manager and any premiums paid therefore by Construction Manager to affect such coverage shall be payable by Owner/Developer.

**EXHIBIT E**  
**INTENTIONALLY OMITTED**

**EXHIBIT F**

**PRELIMINARY SCHEDULE**

[TO BEGIN ON FOLLOWING PAGE]

## **EXHIBIT G**

### **INDEMNITEES AND ADDITIONAL INSURED**

The Related Companies, L.P., Related California Residential, LLC, and their respective subsidiaries, affiliates, officers, directors, managers, members, partners, employees, agents, lenders, successors and assigns.

The City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.

## EXHIBIT H

### **PARTIAL LIEN WAIVER AND RELEASE FORM**

Affidavit made this \_\_\_ day of \_\_\_\_\_, 20\_\_ to \_\_\_\_\_ (the "Developer") by \_\_\_\_\_ ("Contractor") for furnishing of work, labor, services, materials and/or equipment in connection with the development and construction of \_\_\_\_\_ (the "Project") located at \_\_\_\_\_ (the "Property") pursuant to an agreement between Contractor and Developer dated \_\_\_\_\_, as amended (the "Agreement"), for and in consideration of the sum of \_\_\_\_\_ (the "Partial Payment"), representing the amount presently approved as payable under Invoice # \_\_\_\_\_ dated \_\_\_\_\_, for work, labor, services, materials and/or equipment furnished to Developer under the Agreement, the receipt of which, by Contractor from Developer, is hereby acknowledged; Contractor does hereby waive, release, remise and relinquish the right to claim or file a mechanic's or other lien against the Property or any part thereof for all work, labor, services, materials and/or equipment supplied by Contractor, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Contractor, up to and including the \_\_\_ day of \_\_\_\_\_, \_\_\_, excepting only claims currently unresolved for the total amount of \_\_\_\_\_ (\$ \_\_\_\_\_) as described on Attachment 1 hereto for which written notice has been provided to Developer.

Partial Payment to Contractor \$ \_\_\_\_\_.

Cumulative Payment to Contractor (inclusive of Partial Payment) \$ \_\_\_\_\_.

Contractor hereby agrees to indemnify and hold Developer and all entities listed as indemnified parties in the Agreement harmless from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services materials and/or equipment which directly or indirectly relates to that performed or furnished by Contractor and/or its agents, vendors or subcontractors and from and against any claims relating to any extra or additional work, labor, services, materials and/or equipment allegedly performed or furnished by Contractor and/or its agents, vendors or subcontractors. Contractor hereby certifies and warrants that it has fully paid to date all vendors and subcontractors in connection with the aforesaid Project, except for those listed below (List all payables or state "None"):

\_\_\_\_\_  
\_\_\_\_\_

Contractor further affirms that it has received all payments to date as a trust fund for the purpose of paying all claims for work, labor, services, materials and/or equipment and will apply all payments received for said purpose before using any part thereof for any other purpose.

IN WITNESS WHEREOF, this Waiver and Release has been executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Contractor: \_\_\_\_\_

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(Note: include Attachment 1 hereto)



## EXHIBIT I

### FINAL LIEN WAIVER AND RELEASE FORM

Affidavit made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ to \_\_\_\_\_ ("Developer"), by \_\_\_\_\_ ("Contractor") for furnishing of work, labor, services, materials and/or equipment in connection with the development and construction of \_\_\_\_\_ (the "Project") located at \_\_\_\_\_ (the "Property") pursuant to an agreement between Contractor and Developer dated \_\_\_\_\_, as amended (the "Agreement"), for and in consideration of the sum of \_\_\_\_\_, (the "Final Payment") representing the amount presently approved as the final and total amount payable under Requisition # \_\_\_\_\_ dated \_\_\_\_\_, for work, labor, services, materials and/or equipment furnished to Developer under the Agreement, the receipt of which, by Contractor from Developer, is hereby acknowledged; Contractor does hereby waive, release, remise and relinquish the right to claim or file a mechanic's or other lien against the Property or any part thereof for all work, labor, services, materials and/or equipment supplied by Contractor and does so covenant in recognition of the fact that final payment has been received for all work, labor, services, materials and/or equipment supplied by Contractor, including any claims for extra or additional work or any other damage or expense alleged to have been incurred by Contractor, up to and including the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Final Payment to Contractor \$ \_\_\_\_\_.

Cumulative Payment to Contractor (inclusive of Final Payment) \$ \_\_\_\_\_.

Contractor hereby agrees to indemnify and hold Developer and all entities listed as indemnified parties in the Agreement harmless from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services materials and/or equipment which directly or indirectly relates to that performed or furnished by Contractor and/or its agents, vendors or subcontractors and from and against any claims relating to any extra or additional work, labor, services, materials and/or equipment allegedly performed or furnished by Contractor and/or its agents, vendors or subcontractors. Contractor hereby certifies and warrants that it has fully paid to date all vendors and subcontractors in connection with the aforesaid Project, except for those listed below (List all payables or state "None"):

\_\_\_\_\_  
\_\_\_\_\_

Contractor releases and discharges Developer from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, arising from or in connection with the Project or the Property which against Developer Contractor ever had, now have or hereafter can, shall or may have, for upon, or by reason of any matter, claims or causes of action whatsoever from the beginning of the world to the date of this Final Waiver and Release.

Contractor further affirms that it has received all payments to date as a trust fund for the purpose of paying all claims for work, labor, services, materials and/or equipment and will apply all payments received for said purpose before using any part thereof for any other purpose.

**IN WITNESS WHEREOF**, this Final Waiver and Release has been executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Contractor: \_\_\_\_\_

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT J**

**ALLOWANCE LOG**

**EXHIBIT K**  
**ALTERNATE LOG**

**EXHIBIT L**

**SUMMARY OF GMP BUDGET**

**EXHIBIT M**  
**QUALIFICATIONS**