

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

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

**CORRECTION TO DEVELOPMENT AGREEMENT
(FLOWER MART)**

THIS CORRECTION TO DEVELOPMENT AGREEMENT, dated as of October 1, 2021 (this “Correction”), is entered into by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “City”), acting by and through its Planning Department, and KR FLOWER MART LLC, a Delaware limited liability company (“Developer”).

1. City and Developer entered into that certain development agreement dated as of January 7, 2020, recorded March 12, 2020 in the Official Records of San Francisco as Document No. 2020-K914503-000 (the “Development Agreement”). The Development Agreement relates to a site along Brannan Street between 5th and 6th Streets, on Assessor’s Block 3778, Lots 001B, 002B, 004, 005, 047 and 048, as more particularly described on Exhibit A (the “Project Site”). Any undefined term used in this instrument has the meaning given to such term in the Development Agreement.

2. The Parties accidentally attached and recorded some, but not all of, the Transportation Demand Management Program, Exhibit J, to the Development Agreement.

3. The Parties agree that the first five pages of the Transportation Demand Management Program are attached to this Correction as Exhibit J. These pages are in addition to the pages originally attached as Exhibit J to the Development Agreement. By this instrument, the Parties agree that these pages are included as part of Exhibit J to the Development Agreement for all purposes, as if they were attached on the original date of recordation.

4. Except as expressly modified herein, the terms, covenants and conditions of the Development Agreement shall remain unchanged and in full force and effect.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Rich Hillis, Director of Planning

Approved as to form:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan
Deputy City Attorney

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited
liability company

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

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

Project Site

EXHIBIT J

Transportation Demand Management

1. TDM Plan

The Developer shall implement a site-specific Transportation Demand Management Plan attached as Attachment 1. Developer shall implement 75% of applicable target points in accordance with Planning Code Section 169.3 (e)(2). In all other respects, the Project remains subject to the requirements of Planning Code Section 169.

2. City Use of Developer Impact Fees for Transportation

Developer shall pay all amounts due under Planning Code section 411A, the Transportation Sustainability Fee, consistent with the terms of the Development Agreement, including without limitation, section 6.9.2 and Exhibit P. Additionally, the City agrees to allocate \$15 million of other Impact Fees and Exactions payable by Developer (or another developer within the SOMA plan area, if first) to be used for purposes described in the Transportation Sustainability Fund, Planning Code Section 411A.7, as set forth in Exhibit P. This payment is to rebalance the total open space and transportation fees and contributions collected in the Central SOMA Plan area, due to a previous in-kind contribution from another project (598 Brannan) that resulted in a higher value for that project related to open space.

3. In-Kind Option for Bicycle Lane, Traffic Signal and Intersection Enhancements

Subject to the completion of any required environmental review, the City (acting through the Planning Department following consultation with the SFMTA) and Developer agree to use good faith efforts to enter an in-kind agreement for Developer to construct certain improvements that are beyond those required by the Approvals for the Project, including but not limited to:

- new sidewalk width expansion along Brannan Street (northside) and Fifth Street (westside),
- a Class IV raised bicycle lane on Brannan Street from Fifth Street to Sixth Street (northside) and Fifth Street from Brannan Street to Bryant Street (westside),
- a Class II at-grade bicycle lanes on Brannan Street (southside) and Fifth Street (eastside),
- street pavement striping reconfigurations on Brannan Street between Fifth and Sixth Streets and Fifth Street between Brannan and Bryant Streets,

- a mid-block pedestrian curb bulb-out (westside),
- a mid-block traffic signal on 5th Street between Brannan Street and Bryant Street,
- a protected intersection at Brannan Street and Fifth Street (entire intersection) and Brannan Street and Sixth Street (northeast corner only) intersections. Protected intersection elements include corner islands, median refuges, separated bicycle and pedestrian crossings and modified traffic signals,
- Associated utility relocations, including but not limited to, AWSS High Pressure Fire Hydrant and service relocations as required for the Class IV raised bicycle lane.

(collectively, upon agreement, the “Street Improvements”). The in-kind agreement, if any, shall be based on the Planning Department’s standard form, consistent with in-kind agreements for similar street improvements at the 598 Brannan Street and 88 Bluxome Street projects. By approving this Agreement, the Planning Commission approves one or more in-kind agreements for the Street Improvements, and no further Planning Commission action is required for any such agreement. The amount of the fee credit shall equal Developer’s actual costs in designing and completing the Street Improvements, including without limitation third party design and construction costs incurred by Developer and administrative costs incurred by Developer, but not including any improvements that are already required by the Approvals for the Project.

Following execution of an in-kind agreement for the Street Improvements, Developer shall use good faith efforts, working with San Francisco Public Works Infrastructure Task Force, SFMTA and OEWD staff, to complete conceptual and design development drawings for peer review by City departments. The Infrastructure Task Force and the SFMTA commit to coordinating with Planning Department and Developer and providing technical assistance, design specifications and meeting attendance throughout the design process, and obtaining SFMTA Board approval and other required City approvals for the Street Improvements. Developer shall use best efforts to notify Planning Department staff approximately 6 months in advance of the anticipated first site permit issuance for each applicable portion of the Project so that the design team can collectively prepare a timeline for the advancement of the conceptual design for the Street Improvements to 100% design development drawings. Developer is not obligated to incur any design or construction costs for the Street Improvements until the parties have entered into an in-kind agreement for the work.

Submission of designs for Street Improvements shall follow Infrastructure Task Force procedures for basis of design and 100% design development drawing submittals. Following submission, the Infrastructure Task Force, in coordination with the SFMTA, shall obtain design approval from all required City departments, and any failure to obtain such approval shall not delay Developer's construction of any Building on the Project Site. Following required design approvals, Developer shall complete construction documents for City review and approval and then construct the Street Improvements in accordance with the approved construction documents.

Following execution on an in-kind agreement, the parties agree to use good faith efforts to complete the design and construction documents as soon as commercially reasonably possible, in keeping with standard construction schedules and priority processing, but any delay in completion of the documents shall not delay issuance of permits or certificates of occupancy for Developer's adjacent Buildings unless the delay is caused by Developer's failure to act. City acknowledges that Developer will construct the in-kind improvements in phases that match the Project's phasing and in parallel with the construction schedule for the Project provided it is not prevented from doing so due to circumstances outside of Developer's control. The Developer is not subject to any construction completion schedule for the in-kind improvements, provided that Developer shall, upon commencement, diligently prosecute the work to completion subject to force majeure delays, and shall complete construction for each phase before issuance of the first certificate of occupancy for the applicable portion of the Project, as set forth in the in-kind agreement. Notwithstanding the above, City shall not delay issuance of certificates of occupancy for the Project if Developer was unable to complete the in-kind improvements due to circumstances outside of Developer's reasonable control (a "force majeure delay"), provided a force majeure delay shall (i) not include Developer's failure to obtain financing or other economic hardship, and (ii) include City's failure to respond to document submissions by Developer within thirty (30) days. Furthermore, force majeure delay in this context shall include, without limitation, delay or inability to obtain construction materials from third parties, and other third party or governmental restrictions, e.g. street closures, that delay or prevent Developer from proceeding or completing the work.

If Developer does not obtain required approvals for the design or the construction documents within a reasonable time period and as a result Developer anticipates that the improvements will not likely be completed before the scheduled date for completion of the applicable portion of the Project to which such improvements are tied, Developer shall notify Planning and the parties shall meet and confer in good faith

for not less than 20 days in order to agree upon a reasonable schedule for completion of the documents and the subsequent improvement work; provided, the foregoing shall not affect Developer's right to force majeure extensions, including extensions based on City's failure to respond within 30 days as set forth above..

If the parties agree to terminate the in-kind agreement for reasons other than a Developer default, then Developer shall receive credit against Impacts Fees and Exactions for the design work performed by Developer before the date of termination. In such case, Developer will transfer to City the design work completed, without representation, but including an assignment of any rights or warranties held by Developer with respect to such work. If the termination occurs for any other reason, then Developer will pay the applicable Impact Fees and Exactions for the portion of the Project when due and will not be given credit for previous design work relating to the terminated in-kind agreement.

After the Street Improvements have been constructed by Developer, City and Developer shall review Developer's actual costs for the design and construction of the Street Improvements and adjust the fee credits to the Project's Impact Fees and Exactions with respect to any costs in excess or below the original estimate, if any.

Following completion of the construction of the Street Improvements, Developer shall have no maintenance or repair obligation or any other outstanding obligation on the Street Improvements (other than maintenance of the sidewalks that abut the Project per existing City regulations).

4. Other In-Kind Agreements Relative to the Permanent Off-Site Facility.

Subject to the completion of any required environmental review, the City (acting through OEWD and the Planning Department) may request that Developer construct off-site street improvements in connection with the development of the Permanent Off-Site Facility under the Permanent Off-Site Option that are not required by the project approvals for the Permanent Off-Site Facility. Upon any such request, the City, acting through the Planning Department, and Developer shall enter into an in-kind agreement, using the City's standard form, to give credit to Developer against specified Impact Fees and Exactions applicable to the Permanent Off-Site Facility and/or the Project, not including fees designated for affordable housing, in return for Developer's construction of the off-site improvements. In addition, the Planning Department may elect to use Impact Fees and Exactions paid by Developer under this Agreement to pay for some or all of these off-site improvements, which election will be included in the in-kind

agreement (if any). To the extent not required as part of the project approvals or applicable mitigation, the off-site street improvements under this subsection could include, but are not limited to:

- bike lane improvements along Mississippi Street between 16th and 17th Streets,
- mountable curbs and street pavement striping configurations along Mississippi Street between 16th and 17th Streets,
- extension of median to the crosswalk on Mississippi Street at 17th Street intersection.

5. Exemption from Public Works Order No. 201954

The construction of the Project at the Project Site and the Permanent Off-Site Facility at the Alternative Permanent Site shall be exempt from Public Works Order No. 201954 with respect to the requirement to salvage and restore cobblestones and brick, in the event any are located.