

1.20.22 Draft

TRANSFER AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

KR FLOWER MART LLC, a Delaware limited liability company

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AGREEMENT

FOR TRANSFER OF REAL ESTATE

This Agreement for Transfer of Real Estate (the "Agreement") is effective as of January __, 2022 (the "Effective Date"), by and between KR FLOWER MART LLC, a Delaware limited liability company (the "Owner") and the City and County of San Francisco, a municipal corporation ("CCSF"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. CCSF and Owner are concurrently entering into that certain Development Agreement dated as of January 7, 2020 (the "Development Agreement"). The Development Agreement provides for the redevelopment of the approximately 295,144 square foot site along Brannan Street between 5th and 6th Streets (the "Project Site").

B. The Development Agreement require that Developer convey or cause certain real property located near the Project Site at 71 Boardman Place and 356 Harriet Street, San Francisco, and as more particularly described in Exhibit A hereto (the "Property"), to be conveyed to CCSF for affordable housing purposes, or for the purpose of funding or assisting in funding development of affordable housing.

C. The Property is currently a surface parking lot.

D. Subject to the satisfaction of the conditions precedent in this Agreement, CCSF and the Owner desire to provide for the conveyance of the Property to CCSF as set forth in this Agreement to satisfy the requirements of the Development Agreement.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CCSF and the Owner agree as follows:

ARTICLE 1.

DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement. Any capitalized term used in this Agreement that is not defined herein shall have the meaning given to such term in the Development Agreement.

(a) "Approvals" as defined in the Development Agreement.

(b) "Close of Escrow" means the date the Grant Deed is recorded in the Official Records.

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- (c) "Development Agreement" is defined in Recital A.
 - (d) "Finally Granted" as defined in the Development Agreement.
 - (e) "Grant Deed" means the grant deed by which the Owner conveys the Property to CCSF in the form attached hereto.
 - (f) "Hazardous Materials" means:
 - (1) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;
 - (2) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;
 - (3) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq.), Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and
 - (4) any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property.
- The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction or maintenance, of residential developments, or typically used in office or residential activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine.
- (g) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or any portion thereof.
 - (h) "Property" is defined in Recital B above.
 - (i) "Title Company" means Chicago Title Company, or such other title company as the parties may mutually select.

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(j) "Title Report" means that certain title report dated March 5, 2015, issued by the Title Company for the Property.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

Exhibit A: Legal Description of the Property

Exhibit B: Form of Grant Deed

ARTICLE 2. CONVEYANCE OF PROPERTY

Section 2.1 Conveyance.

Owner shall convey title to the Property to CCSF pursuant to the terms, covenants, and conditions of this Agreement at no cost to CCSF. The Property shall include all rights, privileges, and easements incidental or appurtenant to the land, and all mineral, oil, and gas rights, development rights, air rights, water, water rights, riparian rights and water stock relating to the land. There shall be no contracts, leases, or occupancy rights relating to the Property at the time of conveyance.

Section 2.2 Opening Escrow.

To accomplish the conveyance of the Property from the Owner to CCSF, the parties shall establish an escrow with the Title Company. The parties shall execute and deliver written instructions to the Title Company to accomplish the conveyance, which instructions shall be consistent with this Agreement.

Section 2.3 Close of Escrow.

The Close of Escrow shall occur on or before the date that the first certificate of occupancy is issued for the Blocks Building, subject to the satisfaction or waiver of the Owner's Closing Conditions and the CCSF's Closing Conditions. City shall not be required to issue a certificate of occupancy for the Blocks Building if the closing has not occurred for any reason other than a default by the City under this Agreement.

Section 2.4 Closing Documentation.

The Owner shall submit the following documents into escrow, duly executed by the Owner: (1) the Grant Deed; (2) an affidavit under Section 1445(b)(2) of the Federal Tax Code confirming that the Owner is not a "foreign person" within the meaning of the Federal Tax Code; (3) a California Franchise Tax Board Form 590 certifying that the Owner is a California resident; (4) such resolutions, authorizations, or other partnership documents or agreements relating to the Owner as the Title Company may reasonably require to close escrow and issue title insurance; and (5) a closing statement in form and content satisfactory to the Owner and CCSF. CCSF shall

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submit the following documents into escrow, duly executed by CCSF: (1) the Grant Deed, accepted by CCSF; (2) such resolutions, authorizations, or other documents or agreements relating to CCSF as the Title Company may reasonably require to close escrow and issue title insurance; and (3) a closing statement in form and content satisfactory to the Owner and CCSF.

Section 2.5 Owner Closing Conditions.

The following conditions for the benefit of the Owner ("Owner's Closing Conditions") shall be satisfied or waived by Owner prior to or concurrently with the Close of Escrow:

- (a) The Approvals shall be Finally Granted.
- (b) CCSF shall have executed and delivered into escrow the acceptance of the Grant Deed and the other documents required to close escrow in accordance with this Agreement.
- (c) There shall exist no condition, event or act which would constitute a breach or default by CCSF, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default, under this Agreement.
- (d) There shall be no pending litigation or other governmental agency proceeding against Owner, CCSF or the Property concerning this Agreement.
- (e) CCSF shall have performed all of its obligations under this Agreement, and any CCSF representations and warranties in this Agreement shall be true and correct.

Section 2.6 CCSF Closing Conditions.

The following conditions for the benefit of CCSF ("CCSF's Closing Conditions") shall be satisfied or waived by CCSF prior to or concurrently with the Close of Escrow:

- (a) There shall exist no condition, event or act which would constitute a breach or default by the Owner, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default, under this Agreement.
- (b) The Owner shall have executed and delivered into Escrow the Grant Deed and the other documents and funds required to close Escrow in accordance with this Agreement.
- (c) Title Company shall be unconditionally prepared and committed to issue a Title Policy insuring fee title to the Property vested in CCSF, subject to the exceptions described in Section 2.7, and in such form as CCSF shall require, upon receipt of payment of the standard premiums paid therefor.
- (d) There shall be no pending litigation or other governmental agency proceeding against Owner or CCSF concerning the Property or this Agreement. Any defense of such litigation shall be provided as set forth in the Development Agreement.

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(e) The Owner shall have performed all of its obligations under this Agreement and any Owner representations and warranties in this Agreement shall be true and correct.

(f) CCSF shall have approved the physical, legal and environmental condition of the Property, and have determined that the Property is suitable for the development of affordable housing. The Owner shall have demolished any existing structures on the Property at no cost to CCSF and deliver the Property to CCSF free of occupants, and with a secure fence surrounding the perimeter of the Property.

(g) The Owner shall have terminated any existing contracts, leases or licenses relating to Property, and removed, or caused to be removed, any improvements from the Property except as approved by MOHCD. The Owner shall have removed any cars, vehicles or movable equipment on the Property.

(h) CCSF shall have performed any required environmental review, as set forth in Section 6.19.

Section 2.7 Condition of Title.

Upon the Close of Escrow, CCSF shall have insurable title to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (a) applicable building and zoning laws and regulations;
- (b) the Grant Deed;
- (c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed; and
- (d) any other exceptions listed in the Title Report.

Section 2.8 Condition of Property.

(a) **"AS IS" PURCHASE. BY CLOSING, CCSF SHALL BE DEEMED TO HAVE APPROVED THE PHYSICAL CONDITION OF THE PROPERTY. CCSF SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE OWNER IS SELLING AND CCSF IS ACQUIRING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT CCSF IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE OWNER OR ANY REPRESENTATIVE, AGENT OR EMPLOYEE OF OWNER, AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED**

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CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. CCSF AFFIRMS THAT CCSF HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE OWNER OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE OWNER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. EXCEPT FOR RELIANCE ON THE EXPRESS REPRESENTATIONS MADE BY THE OWNER IN THIS AGREEMENT, CCSF ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). CCSF UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(b) Acknowledgment. CCSF acknowledges and agrees that: (i) to the extent required to be operative, the disclaimers of warranties contained in this Section 2.8 are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements; and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement and that the Owner would not have agreed to convey the Property to CCSF without the disclaimers and other agreements set forth in this Section 2.8. The Owner is not liable or

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bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person (other than the Owner). CCSF has fully reviewed the disclaimers and waivers set forth in this Agreement with counsel and understands the significance and effect thereof.

(c) CCSF's Release of the Owner. CCSF, on behalf of itself and anyone claiming by, through or under CCSF, hereby waives its right to recover from and fully and irrevocably releases the Owner and its members, partners, employees, officers, directors, representatives, agents, related and affiliated entities, successors and assigns (the "Released Parties") from any and all claims, responsibility and/or liability that CCSF may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever; (ii) any presence of Hazardous Materials; and (iii) any information furnished by the Released Parties under or in connection with this Agreement; provided the foregoing release does not apply to a breach of any representation or warranty by the Owner under this Agreement, subject to the survival period set forth in Section 6.12.

(d) Scope of Release. In connection with the release in Section 2.8(c), CCSF expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

BY PLACING ITS INITIALS BELOW, CCSF SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT CCSF WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

Initialed on behalf of CCSF: _____

Section 2.9 Costs of Escrow and Closing.

Ad valorem taxes, if any, shall be prorated as of the date of conveyance of the Property from the Owner to CCSF. The Owner shall pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, and any other costs and charges of the escrow to complete the Close of Escrow. The Owner shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges, and the cost of removing any Title Defects. At closing, the Owner will make, through escrow, a one-time payment to CCSF of \$919,100 to fund CCSF

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remediation costs at the Property. Payment shall be made as directed by MOHCD through escrow. Page

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ARTICLE 3. PRIOR TO CLOSE OF ESCROW

Section 3.1 Responsibilities.

It shall be the responsibility of CCSF to coordinate, schedule and conduct all required reviews, inspections and due diligence with respect to its proposed use or disposition of the Property. It shall be the responsibility of the Owner to remove or cause to be removed existing vehicles, movable equipment and the existing billboard(s) from the Property. The Owner shall not permit the construction of any improvements on the Property from the effective date of this Agreement to the Close of Escrow.

Section 3.2 Title Defects.

(a) If after the date of this Agreement and prior to the Close of Escrow any claim of lien, encumbrance, covenant, assessment, easement, lease or other similar title encumbrance is filed against the Property ("Title Defects"), then the Owner shall, within twenty (20) days after receiving notice of the Title Defect, either remove the Title Defect or bond over or otherwise cause the release of the Title Defect in form reasonably acceptable to CCSF and the Title Company.

(b) If the Owner fails to discharge any Title Defect in the manner required in this Section 3.2 before the Close of Escrow, then in addition to any other right or remedy, CCSF may (but shall be under no obligation to) discharge such Title Defect at the Owner's expense. Alternatively, CCSF may require the Owner to immediately deposit with CCSF the amount necessary to satisfy such Title Defect and any costs, pending resolution thereof. CCSF may use such deposit to satisfy any Title Defect that is adversely determined against the Owner.

Section 3.3 Inspections.

(a) Upon not less than 24 hours' notice the Owner shall permit and facilitate, and shall require its agents, employees and contractors to permit and facilitate, observation and inspection at the Property by or on behalf of CCSF and its agents, consultants, employees and contractors, during reasonable business hours after the Effective Date and prior to the Close of Escrow for the purposes of conducting such due diligence as CCSF determines to be necessary or appropriate; provided, however, no invasive testing shall be performed on the Property, except as permitted by Section 3.3(b). CCSF has received a copy of that certain Phase I Environmental [*describe any environmental due diligence documents provided*]. The Owner agrees to deliver to CCSF all documents and file materials regarding the environmental condition of the Property, including any Hazardous Materials that may have come to be located in, on or beneath the Property, to the extent in Owner's Possession, within ten (10) days following the execution of this Agreement. Such documents and file materials shall be delivered without any representation or warranty regarding the correctness, accuracy or completeness of such documents and file materials. As used in this Section 3.3, the term "Owner's Possession" means those documents and file materials that are known to Owner and that are in Owner or its affiliates possession or

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control. CCSF shall rely entirely upon its own investigations, inspections and due diligence as to the condition or suitability of the Property for its intended purpose.

(b) CCSF and its agents, employees, and representatives shall have a right of access to the Property commencing on the date that the Approvals are Finally Granted for the sole purpose of conducting a geotechnical analysis as may be required to evaluate engineering issues related to the construction of improvements on the Property; provided, however, no other intrusive testing shall be permitted without Owner's prior written approval, which may be granted or withheld in Owner's sole discretion. If CCSF desires to perform such geotechnical analysis, CCSF shall first obtain Owner's prior written approval (which approval shall not be unreasonably withheld or delayed) to CCSF's written protocol for conducting any invasive geotechnical testing. CCSF shall provide to Owner for its review a proposed written protocol for invasive testing not less than fifteen (15) business days prior to the date CCSF intends to commence such testing. CCSF shall deliver to Owner copies of any finalized geotechnical analysis related to the Property that CCSF orders or has conducted. In the course of its investigations: (i) CCSF shall, and shall cause its agents, employees and representatives to, use commercially reasonable efforts to minimize interference with the activities of Owner, and (ii) CCSF shall comply with all applicable safety protocols for such testing.

(c) Prior to any entry or inspection of the Property, CCSF or its agents and contractors shall provide Owner with evidence of insurance coverage (in commercially reasonable amounts) by providing Owner with a copy of an insurance certificate naming Owner as an additional insured. CCSF and its agents and contractors shall keep the insurance evidenced by such certificate in effect during the pendency of this Agreement. CCSF shall keep the Property free and clear of any liens caused by CCSF or its agents, employees and contractors and will indemnify, defend, and hold Owner harmless from all claims and liabilities asserted against Owner caused by CCSF, its agents, employees, or contractors entry onto or use of the Property. If any inspection or test damages the Property, CCSF will restore the Property to substantially the same condition as existed prior to any such inspection or test. CCSF waives all rights of subrogation against Owner and its agents, representatives, officers, directors and employees for recovery of damages to the extent such damages are covered by insurance maintained pursuant to this Agreement. CCSF's obligations under this Section 3.3(c) shall survive the Close of Escrow and any termination of this Agreement.

Section 3.4 Taxes and Assessments.

The Owner shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, social security benefit, withholding, sales, and other taxes assessed against it, or payable by it, relative to the Property prior to the Close of Escrow; provided, however, that the Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Owner exercises its right to contest any tax, assessment, or charge against it, (a) CCSF may extend the Close of Escrow until the contest has been finally determined, and (b) the Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. In no event shall CCSF be required to close during the pendency of any tax contest.

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Section 3.5 Hazardous Materials.

(a) From the Effective Date and until the Close of Escrow, Owner may not cause or permit the use and operation of the Property to be in violation of any Hazardous Materials Law, and Owner may not cause or permit the use, generation, manufacture, storage or disposal of on, under, or about the Property or transportation to or from the Property of any Hazardous Materials, except for cleaning materials and other materials commonly used in connection with the operation of the Property for surface parking lot purposes, but not including vehicle maintenance.

(b) Owner shall immediately advise CCSF in writing if at any time prior to Close of Escrow (1) it receives written notice of any Hazardous Materials claims, (2) the Owner learns that a release of any Hazardous Material has occurred in or around the Property, and (3) the Owner discovers any occurrence or condition on any real property adjoining the Property that could cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

(c) CCSF shall have the right to join and participate in, as a party if it so elects, and be represented by counsel acceptable to CCSF (or counsel of its own choice if a conflict exists with Owner) in any legal proceedings or actions initiated in connection with any Hazardous Materials claims arising after the Effective Date and prior to Close of Escrow and to have its reasonable attorneys' fees in connection therewith paid by Owner. Nothing shall require CCSF to join or participate, or to accept the Property if CCSF becomes aware of any Hazardous Materials claim in or around the Property.

Section 3.6 Notice of Litigation.

Owner shall promptly notify CCSF in writing of any existing or threatened (in writing) litigation affecting Owner or the Property prior to Close of Escrow.

ARTICLE 4. ALTERNATIVE PERFORMANCE

If, following due diligence, CCSF is not prepared to take title and proceed with the Close of Escrow on the Property in accordance with the schedule described Section 2.3, then the parties will meet and confer to identify an alternative Transfer Parcel as defined in the Development Agreement), that the City is willing to accept.

ARTICLE 5. DEFAULT AND REMEDIES

Section 5.1 Default.

In the event CCSF or Owner fails to perform such party's obligations under this Agreement (except as may be caused or excused by the other party's default), including without limitation,

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failure to convey the Property within the time and in the manner set forth herein, the party claiming default shall first notify the other party in writing of its purported breach or failure, giving that party forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the default is not cured within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the defaulting party shall commence to cure and diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days. Thereafter, if the default is not cured then the non-defaulting party shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (a) waive such default; (b) prosecuting an action for actual damages (according to proof) or specific performance; and (c) terminating this Agreement.

Notwithstanding anything to the contrary above, it shall not be a CCSF default to fail to take the Property for any reason, so long as CCSF is willing to accept the Backup Payment or to extend the Close of Escrow if needed (and, in connection with any such extension, to continue to issue Subsequent Approvals during any period in which the Owner is not in default under this Agreement).

Section 5.2 Remedies Cumulative.

Except as expressly stated in this Agreement to the contrary, no right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 6. GENERAL PROVISIONS

Section 6.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the Owner and CCSF shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by reputable overnight delivery service, or delivered personally, to the principal office of the Owner and CCSF as follows:

CCSF: Mayor's Office of Housing and Community Development
1 South Van Ness Avenue
5th Floor
San Francisco, CA 94103
Attention: Director

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with a copy to:

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

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attention: Real Estate/Finance Team – Flower Mart Project

Owner:

Mike Grisso
Senior Vice President
KR Flower Mart LLC
c/o Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105

with a copy to:

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

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 6.1.

Section 6.2 Forced Delay.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God, or other deities; acts of terrorism or the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); acts of the other party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of CCSF); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt

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of the notice. Times of performance under this Agreement may also be extended by mutual agreement of the parties in writing.

Section 6.3 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 6.4 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 6.5 No Brokers.

Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's reasonable attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this Section 6.5 shall survive expiration of the Close of Escrow or the termination of this Agreement, and shall remain in full force and effect.

Section 6.6 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 6.7 Legal Actions and Attorneys' Fees.

Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of the County of San Francisco. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney's fees and costs incurred in such action. For purposes of this Agreement, reasonable attorneys' fees of CCSF'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

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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.

Section 6.8 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the parties expressly releases the Property from the requirements of this Agreement.

Section 6.9 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another.

Section 6.10 Time of the Essence.

In all matters under this Agreement, the parties agree that time is of the essence.

Section 6.11 Action by CCSF.

Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by CCSF is required or permitted under this Agreement, such action may be given, made, or taken by the Director of the Mayor's Office of Housing and Community Development, or by any person who shall have been designated in writing to the Owner by the said Director, without further approval by the Board of Supervisors. Any such action shall be in writing.

Section 6.12 Representation and Warranties of Owner.

The Owner hereby represents and warrants to CCSF as follows:

(a) **Organization.** The Owner is a duly organized, validly existing Delaware limited liability company, and is in good standing under the laws of the State of California and has the power to own its property and carry on its business as now being conducted.

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(b) Authority of Owner. The Owner has full power and authority to execute and deliver this Agreement, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Owner, and all actions required under the Owner's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Owner enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Owner, or any provision of the organizational documents of the Owner, or will conflict with or constitute a breach of or a default under any agreement to which the Owner is a party, or will result in the creation or imposition of any lien upon any assets or property of the Owner, other than liens established pursuant hereto.

(f) Pending Proceedings. The Owner is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Owner, threatened against or affecting the Owner, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Owner, materially affect the Owner's ability to perform its obligations under this Agreement.

(g) Hazardous Materials. In fulfillment of the purposes of California Health and Safety Code Section 25359.7(a), the Owner hereby represents and warrants that it has no knowledge of, and no reasonable cause to believe that any release of Hazardous Materials has come to be located in, on or beneath the Property, except: (i) Owner discloses the possibility of gasoline, diesel or other vehicle fluids or exhaust associated with the surface parking lot use of the Property (yet the Owner has no knowledge of any actual Hazardous Material in, on or beneath the Property), (ii) as otherwise contained in any documents provided by Owner to CCSF prior to the Close of Escrow, or (iii) as otherwise known or discovered by CCSF prior to the Close of Escrow.

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The Owner on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless CCSF and its successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from any misrepresentation or breach of warranty made by the Owner in this Agreement. The provisions of this Section 6.12 shall survive beyond the Close of Escrow for a period of twelve (12) months and no claim for a breach of a representation or warranty shall be actionable or payable unless CCSF commences a legal action for such breach within such six-month period.

Section 6.13 Entire Understanding of the Parties.

This Agreement (together with the Development Agreement) constitutes the entire understanding and agreement of the parties. All prior discussions, understandings and written agreements are superseded by this Agreement. The parties' respective counsel have read and reviewed this Agreement and agree that any rule of construction (including, but not limited to Civil Code Section 1654, as may be amended from time to time) to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

Section 6.14 Amendments.

The parties can amend this Agreement only by means of a writing executed by the Owner and CCSF.

Section 6.15 Counterparts; Multiple Originals.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Section 6.16 General Condition.

While this Agreement anticipates that the Property, after the Close of Escrow, may be used by CCSF to develop affordable low-income housing, or sold, mortgaged, or otherwise used by CCSF to finance affordable housing, unless the rights and obligations of the parties are liquidated as provided in Article 5, there are no terms or description of any such possible future development, which are not known or can be known and therefore any such future possible development is entirely speculative and uncertain. CCSF is under no legal obligation to use the Property for said purpose, or any other purpose, or on any schedule or description. Accordingly, CCSF retains absolute discretion before and after the Close of Escrow: to determine the nature, purpose, scope and schedule for any future use of the Property; to approve or deny necessary permits, authorizations or agreements in connection therewith; to modify or design any such project as may be necessary to mitigate significant environmental impacts in connection therewith; to select other feasible alternatives or adopt feasible mitigation measures to avoid or substantially lessen significant environmental impacts prior to taking final action if such significant impacts cannot be avoided; or to determine not to proceed with a project on the Property, or to proceed to accept the Backup Payment under this Agreement and not to proceed to Close of Escrow. The parties acknowledge and agree that if the Development Agreement terminates prior to the Community

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Benefit obligation to which this Agreement pertains, this Agreement shall concurrently terminate with the Development Agreement.

Section 6.17 Notification of Limitations on Contributions.

Through its execution of this Agreement, the Owner acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling 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, 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 such contract or six months after the date the contract is approved. The Owner acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Owner further acknowledges that the prohibition on contributions applies to each member of the Owner's board of directors, and the Owner's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in the Owner; any subcontractor listed in the contract; and any committee that is sponsored or controlled by the Owner. Additionally, the Owner acknowledges that the Owner must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

Section 6.18 Non-Liability of Officials, Employees and Agents.

Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of CCSF shall be personally liable to the Owner or its successors and assigns, in the event of any default by CCSF, or for any amount which may become due to the Owner or its successors and assigns, under this Agreement.

Notwithstanding anything to the contrary in this Agreement, no individual member, partner, employee, officer, director, representative, or agent of the Owner or its affiliates shall be personally liable to CCSF or its successors and assigns, in the event of any default by the Owner, or for any amount which may become due to CCSF or its successors and assigns, under this Agreement.

Section 6.19 Environmental Review.

Subject to the limitations on invasive testing set forth in Section 3.3(b), no other provision in this Agreement shall prevent or limit the absolute discretion of CCSF to conduct environmental review in connection with any future proposal for development on the Property, to make any modifications or select feasible alternatives to such future proposals as may be deemed necessary to conform to any applicable Laws, including without limitation, CEQA, balance benefits against unavoidable significant impacts before taking final action, or determine not

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proceed with such future proposals, and to obtain any applicable permits or other authorization for uses on the Property.

[Signatures on following page.]

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IN WITNESS WHEREOF, the County and the Owner have executed this Agreement as of the Effective Date.

OWNER:

KR FLOWER MART CORPORATION

By: _____

Name: _____

Its: _____

CCSF:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA,
CITY ATTORNEY

By: _____

Charles Sullivan
Deputy City Attorney