

File No. 211298 Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date Jan 20, 2022

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- Memorandum of Understanding (MOU)
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 - Ethics Commission
- Award Letter
- Application
- Form 700
- Vacancy Notice
- Information Sheet
- Public Correspondence

OTHER (Use back side if additional space is needed)

- Planning Resolution No. 20486
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Victor Young Date Jan 24, 2022
Completed by: _____ Date _____

1 [Administrative Code - Central SoMa Legacy Business and PDR Support Fund - Jackson
2 Playground Park Fund - Planning Code Fee Credits - Real Property Conveyance for
3 Affordable Housing Construction]

4 **Ordinance amending the Administrative Code to create the Central SoMa Legacy**
5 **Business & PDR Support Fund and the Jackson Playground Park Fund; crediting**
6 **payments to be made by KR Flower Mart, LLC under the Flower Mart Development**
7 **Agreement against Eastern Neighborhoods Infrastructure Fees under Planning Code,**
8 **Section 423, and Transportation Sustainability Fees under Planning Code, Section**
9 **411A; authorizing the City to accept land located at 71 Boardman Place and 356 Harriet**
10 **Street (Assessor's Parcel Block No. 3779, Lot Nos. 084 and 112) for affordable housing;**
11 **and providing KR Flower Mart, LLC credit against Jobs-Housing Linkage Fees under**
12 **Planning Code, Section 413, for the value of that land; authorizing the attachment of**
13 **missing pages to the Transportation Demand Management exhibit of the Development**
14 **Agreement; making findings under the California Environmental Quality Act, findings**
15 **of conformity with the General Plan, and with the eight priority policies of Planning**
16 **Code, Section 101.1(b), and public necessity, convenience, and welfare findings under**
17 **Planning Code, Section 302.**

18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Board amendment additions** are in double-underlined Arial font.
22 **Board amendment deletions** are in ~~strikethrough Arial font~~.
23 **Asterisks (* * * *)** indicate the omission of unchanged Code
24 subsections or parts of tables.

25 Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

///

1 (a) KR Flower Mart, LLC, a Delaware limited liability company ("Developer") owns
2 an approximately 6.5-acre site generally along Brannan Street between Fifth and Sixth
3 Streets, on Assessor's Block 3778, Lots 001B, 002B, 004, 005, 047 and 048 (the "6th and
4 Brannan Site").

5 (b) On January 7, 2020, the Board of Supervisors adopted Ordinance No. 002-20
6 approving a development agreement relating to the 6th and Brannan Site (the "Development
7 Agreement") under Chapter 56. A copy of the Development Agreement is on file with the
8 Clerk of the Board in File No. 190682.

9 (c) The Development Agreement provides for the development of the 6th and
10 Brannan Site with office and retail uses, and for the development of a new on-site or off-site
11 wholesale flower market, all as more particularly described in the Development Agreement
12 (the "Project"). Consistent with the terms of the Development Agreement, on March 16, 2020,
13 the City exercised the "Permanent Off-Site Option" for the construction of the new wholesale
14 flower market by the Developer at an off-site location (the "Permanent Off-Site Facility"), at
15 901 16th Street, on Assessor's Block 3949, Lots 001 and 002, and Block 3950, Lots 001 (the
16 "16th Street Site").

17 (d) The Development Agreement also provides public benefits by the Developer
18 that could not have been obtained through application of existing City ordinances, regulations,
19 and policies, and for other Developer obligations, including an obligation to lease the
20 Permanent Off-Site Facility to the "Master Tenant" pursuant to the "Permanent Off-Site Master
21 Lease", as those terms are defined in the Development Agreement.

22 Section 2. CEQA Findings.

23 On July 3, 2019, the Environmental Review Officer ("ERO") issued a Community Plan
24 Exemption ("CPE") and Addendum for the Project pursuant to the California Environmental
25 Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA"). Copies of

1 the CPE and Addendum are on file with the Clerk of the Board of Supervisors in File No.
2 190681. This Board relied on the CPE, Addendum, and related documents (the “CEQA
3 Documents”), in approving the Project. Since that time, there have been no substantial project
4 changes and no substantial changes in project circumstances that would require major
5 revisions to the CEQA Documents, and there is no new information of substantial importance
6 that would change the conclusions set forth in the CEQA Documents. The Board adopts and
7 incorporates the CEQA Documents by reference as though fully set forth herein.

8 Section 3. Land Use Findings.

9 The Board of Supervisors finds that the actions in this ordinance will serve the public
10 necessity, convenience, and general welfare pursuant to Planning Code Section 302, and are
11 in conformity with the General Plan and the eight priority policies of Planning Code Section
12 101.1 for the reasons set forth in Planning Commission Resolution No. 20486. The Board
13 hereby adopts those findings and incorporates them herein by reference.

14 Section 4. Central SoMa Legacy Business & PDR Support Fund.

15 The Administrative Code is hereby amended by adding Section 10.100-[xxx], to read
16 as follows:

17 **SEC. 10.100-[xxx] CENTRAL SOMA LEGACY BUSINESS & PDR SUPPORT FUND.**

18 (a) Establishment of Fund. The Central SoMa Legacy Business & PDR Support Fund is
19 established as a category four fund to receive fees and other contributions to the fund collected by the
20 Controller.

21 (b) Use of Fund. The Central SoMa Legacy Business & PDR Support Fund will provide
22 annual business grants of at least \$600,000 to the San Francisco Flower Mart LLC, or any successor
23 master tenant under the master lease for the San Francisco Flower Mart (the “Master Lease”), located
24 at 16th Street and Mississippi Streets, to subsidize operations of the wholesale flower market, subject to
25 the availability of funds. Grants to the master tenant will be made each year beginning in the fourth

1 year of the Master Lease term, up to the earlier of (i) 34 years after the start of the Master Lease, (ii)
2 the exhaustion of funds in the Central SoMa Legacy Business & PDR Support Fund, or (iii) the
3 termination or expiration of the Master Lease. Funds may also be used for job training, job retention,
4 and other economic development purposes in support of the wholesale flower mart. All expenditures
5 from the fund shall require prior approval of the City's Controller, in consultation with the OEWD
6 Director of Development. The amount of any grant to the master tenant shall be based upon an amount
7 that, in the City Controller's judgment, will provide a continuous revenue stream during the Master
8 Lease term and will also provide necessary support to the master tenant to continue operations. In its
9 sole discretion and subject to all approvals, the City may consider contributing additional funds to the
10 Central SoMa Legacy Business and PDR Support Fund.

11 (c) **Administration of Fund.** The City's Controller shall administer the fund and shall
12 report annually to the Board of Supervisors on the current status of the fund, the amounts approved for
13 disbursement, and the number and types of businesses supported. The Controller shall have the
14 authority to prescribe rules and regulations governing the fund. Any unexpended funds remaining after
15 the earlier of (i) 34 years from the start of the Master Lease, or (ii) the expiration or termination of the
16 Master Lease, shall be either used for job training, job retention, and other economic development
17 purposes or deposited into the Eastern Neighborhoods Community Improvements Fund or the relevant
18 successor fund, as the Controller determines, following consultation with the OEWD Director of
19 Development.

20 Section 5. \$20 Million Contribution to the Central SoMa Legacy Business & PDR
21 Support Fund.

22 Consistent with the Development Agreement and as a result of rent concessions that
23 Developer made to the San Francisco Flower Mart LLC in connection with the Development
24 Agreement, upon Developer's payment to the City of \$20,000,000 into the Central SoMa
25 Legacy Business & PDR Support Fund, Developer shall receive a credit of \$28,500,000

1 against the Eastern Neighborhoods Infrastructure Fees under Planning Code Section 423 et
2 seq. that would otherwise be due and payable for the Project. The Controller shall deposit
3 Developer's \$20,000,000 payment into the Central SoMa Legacy Business & PDR Support
4 Fund to support the master tenant under the Master Lease and for other permitted uses as set
5 forth in Section 4 above. This payment shall be made by the Developer before issuance of
6 the first construction document for the Project.

7 Section 6. Jackson Playground Park Fund.

8 The Administrative Code is hereby amended by adding Section 10.100-[xxx], to read
9 as follows:

10 **SEC. 10.100-[xxx] JACKSON PLAYGROUND PARK FUND.**

11 (a) Establishment of Fund. The Jackson Playground Park Fund is established as a
12 category four fund to receive fees and other contributions to the fund.

13 (b) Use of Fund. The Jackson Playground Park Fund is to be used for the construction of
14 physical improvements to the Jackson Playground Park, and for repair and maintenance of the Jackson
15 Playground Park. All expenditures from the fund shall require prior approval of the General Manager
16 of the City's Recreation and Park Department.

17 (c) Administration of Fund. The Recreation and Park Department shall administer the
18 fund and shall report annually to the Board of Supervisors on the current status of the fund, the
19 amounts approved for disbursement, and the improvements and activities funded. The Recreation and
20 Park Department shall have the authority to prescribe rules and regulations governing the fund.

21 Section 7. \$2,158,000 Contribution to the Jackson Playground Park Fund.

22 The Controller shall place into the Jackson Playground Park Fund, upon receipt, a total
23 of \$2,158,000 of Developer's Eastern Neighborhoods Fees, with approximately \$358,000
24 coming from the Eastern Neighborhood Fees for the Permanent Offsite Facility at the 16th
25 Street Site and the remainder coming from the Eastern Neighborhood Fees for the Project at

1 the 6th and Brannan Street Site. Developer's payments shall be made as and when required
2 under Article 4 of the Planning Code.

3 Section 8. Land Dedication for Affordable Housing; Credit Against the Jobs-Housing
4 Linkage Fee.

5 In accordance with the recommendation of the Director of Mayor's Office of Housing
6 and Community Development ("MOHCD") and Director of Property, the Board of Supervisors
7 approves the conveyance of land at 71 Boardman Place and 356 Harriet Street on Assessor's
8 Block 3779, Lots 084 and 112 ("Transfer Parcel") to the City, under the jurisdiction of
9 MOHCD, in accordance with the Transfer Agreement, a copy of which is in Board File No.
10 211298 (the "Transfer Agreement"). The Board authorizes the Director of Property and the
11 MOHCD Director to execute the Transfer Agreement, to accept the deed to the Transfer
12 Parcel in the name and on behalf of the City, and to take such additional actions as may be
13 required to effectuate a transfer of the Transfer Parcel. Upon the City's acceptance of the
14 Transfer Parcel, the Project shall receive credit against the Jobs-Housing Linkage Fee, in
15 accordance with Planning Code Sections 249.78(e)(2) and 413.7, in the amount of
16 \$5,355,000.

17 Section 9. Transportation Demand Management. The first pages of the Transportation
18 Demand Management Program, Exhibit J to the Development Agreement, were inadvertently
19 excluded from the Development Agreement. The Board of Supervisors approves these three
20 pages, copies of which are in Board File No. 211298, and authorizes City staff to include
21 these pages as part of the Development Agreement.

22 Section 10. Actions in Furtherance of this Ordinance.

23 The Mayor, Clerk of the Board of Supervisors, the Directors of MOHCD, Property,
24 OEWD and the Controller are hereby authorized and directed to take any and all actions
25 which they or the City Attorney may deem necessary or advisable in order to effectuate the

1 purpose and intent of this ordinance (including, without limitation, acceptance of the land
2 dedication; entering into any amendments or modifications to the Transfer Agreement that the
3 Director of Property determines, in consultation with the City Attorney and Director of MOHCD
4 to be in the best interest of the City that do not otherwise materially increase the obligations or
5 liabilities of the City and are necessary or advisable to effectuate the purposes of the Transfer
6 Agreement and are in compliance with all applicable laws.

7 Section 11. Effective Date.

8 This ordinance shall become effective 30 days after enactment. Enactment occurs
9 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
10 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
11 Mayor's veto of the ordinance.

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: /s/ Charles Sullivan
16 Charles Sullivan
17 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Central SoMa Legacy Business and PDR Support Fund - Jackson Playground Park Fund - Planning Code Fee Credits - Real Property Conveyance for Affordable Housing Construction]

Ordinance amending the Administrative Code to create the Central SoMa Legacy Business & PDR Support Fund and the Jackson Playground Park Fund; crediting payments to be made by KR Flower Mart, LLC under the Flower Mart Development Agreement against Eastern Neighborhoods Infrastructure Fees under Planning Code, Section 423, and Transportation Sustainability Fees under Planning Code, Section 411A; authorizing the City to accept land located at 71 Boardman Place and 356 Harriet Street (Assessor's Parcel Block No. 3779, Lot Nos. 084 and 112) for affordable housing; and providing KR Flower Mart, LLC credit against Jobs-Housing Linkage Fees under Planning Code, Section 413, for the value of that land; authorizing the attachment of missing pages to the Transportation Demand Management exhibit of the Development Agreement; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b), and public necessity, convenience, and welfare findings under Planning Code, Section 302.

Existing Law

California Government Code section 65864 *et seq.* (the Development Agreement Statute”) and San Francisco Administrative Code Chapter 56 (“Chapter 56”) authorize the City to enter into development agreements. On January 7, 2020, the Board of Supervisors adopted Ordinance No. 002-20 approving a development agreement relating to the 5th and Brannan Site (the "Development Agreement"). A copy of the Development Agreement is on file with the Clerk of the Board in File No. 190682.

Amendments to Existing Law

This ordinance would create the Central SoMa Legacy Business & PDR Support Fund and the Jackson Playground Park Fund (collectively, the “Funds”), and place certain developer impact fees payable by the developer into these two Funds upon City’s receipt, with the developer receiving credit for fees paid as described in the ordinance. These fees would then be used by the City for the purposes described in the Administrative Code sections establishing the Funds, including to support the flower vendors at the new offsite flower market location. This ordinance will also (1) authorize the City, acting through MOHCD, to accept real property at 71 Boardman Place and 356 Harriet Street for affordable housing, and (2) authorize City staff to correct the Development Agreement by adding missing pages to the Transportation Demand Management exhibit that were inadvertently not attached to the original Development Agreement.

FILE NO. 211298

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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.

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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

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.



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20486

HEARING DATE: JULY 18, 2019

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.: 2017-000663DVA
Project Address: 610-698 Brannan Street
 (aka Flower Mart Project)
 2000 Marin Street
 (aka Wholesale Flower Market Temporary Site)
Existing Zoning: (610-698 Brannan Street)
 CMUO (Central SoMa Mixed Use Office) Zoning District
 MUR (Mixed Use Residential) Zoning District
 Central SoMa Special Use District
 (2000 Marin Street)
 PDR-2 (Production Distribution and Repair) Zoning District;
Block/Lot: (610-698 Brannan Street) 3778/001B, 002B, 004, 005, 047, 048
 (2000 Marin Street) 4346/003
Project Sponsor: KR Flower Mart, LLC
Staff Contact: Ella Samonsky – (415) 575-9112
ella.samonsky@sfgov.org

RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND KR FLOWER MART, LLC, FOR CERTAIN REAL PROPERTY LOCATED AT 5th AND BRANNAN STREETS, COMPRISED OF ASSESSOR'S BLOCK 3778 AND LOTS 001B, 002B, 004, 005, 047 AND 048, ALTOGETHER CONSISTING OF APPROXIMATELY 6.5 ACRES, AND ADOPTING VARIOUS FINDINGS, INCLUDING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, Chapter 56 of the San Francisco Administrative Code sets forth the procedure by which a request for a development agreement will be processed and approved in the City and County of San Francisco.

WHEREAS, California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.

WHEREAS, Project Sponsor has filed applications with the Planning Department (hereinafter "Department") for a Large Project Authorization, Office Allocation Authorization, Development Agreement, Legislative Amendments, and Environmental Review to allow the Project Sponsor to construct

three new mixed-use buildings at 610-698 Brannan Street, Block 3778 Lots 1B, 2B, 4, 5, 47, 48 (hereinafter "Project Site").

WHEREAS, the Development Agreement would enable the Flower Mart Project ("Project" and "Project Variant," as described herein). The Flower Mart Project is a new mixed-use development with new office, retail, and PDR uses, as well as a publicly-accessible open space. The Project would demolish the existing San Francisco Wholesale Flower Market buildings as well as other adjacent buildings and surface parking lots on the project site. The Project would construct three new mixed-use office buildings on the project site, that in total include approximately 2,032,165 gross square feet of office, 83,459 square feet of retail (including 10,000 rentable square feet of flower retail space), and 113,036 square feet of wholesale sales use (the new San Francisco Wholesale Flower Market). The Project would provide 769 vehicle parking spaces, 30 loading spaces, 410 Class 1 bicycle parking spaces, 86 Class 2 bicycle parking spaces, and 40,655 square feet of on-site and off-site privately-owned public open space. A Project Variant would contain a total of 2,061,380 square feet of office, 90,976 square feet of retail and 22,690 square feet of child care facility, 950 square feet community facility and 41,228 square feet of on-site and off-site privately-owned public open space, 632 off-street parking spaces, 9 loading spaces, and 516 Class 1 bicycle spaces, and 92 Class bicycle spaces.

WHEREAS, in either the Project or Project Variant scenario, the Project Sponsor will relocate the San Francisco Flower Market vendors to an interim location at 2000 Marin Street ("Temporary Site") while the Project site is under construction.

WHEREAS, the Board will be taking a number of actions in furtherance of the Project and Project Variant, including (i) the adoption of Planning Code Text Amendments that would create additional Key Site exceptions for the Flower Mart Project to the requirements for ground floor transparency and fenestration, PDR floor heights, overhead obstructions, timing of off-site open space, parking pricing, residential to non-residential ratio, child-care facilities, PDR replacement, PDR and Community Building Space, and active uses; and (ii) the adoption of the 2000 Marin Street Special Use District ("2000 Marin Street SUD"), which modifies the Planning Code requirements for demolition of industrial buildings, streetscape improvements, screening and landscaping, ground floor height standards, better roofs, shower facilities and lockers, car share, vehicle and bicycle parking, transportation demand management, and impact fees for a period of six years at that site; and (iii) Zoning Map Amendments related to the 2000 Marin Street SUD.

WHEREAS, in furtherance of the Project and the City's role in subsequent approval actions relating to the Project, the City and KR Flower Mart, LLC negotiated a development agreement for development of the Project site, a copy of which is attached as Exhibit A (the "Development Agreement").

WHEREAS, the City has determined that as a result of the development of the Project site in accordance with the Development Agreement, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies, as more particularly described in the Development Agreement.

WHEREAS, the Development Agreement will eliminate uncertainty in the City's land use planning for the Project and secure orderly development of the Project Site.

WHEREAS, the Development Agreement shall be executed by the Director of Planning and City Attorney, subject to prior approval by the Board of Supervisors.

WHEREAS, on July 3, 2019, the Environmental Review Officer ("ERO") issued a Community Plan Exemption ("CPE") and Addendum for the Project, Project Variant, and the Temporary Site pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA"). Copies of the CPE and Addendum are on file in the Planning Department Case No. 2015-004256ENV with Planning Department Custodian of Records Jonas Ionin at 1650 Mission Street, San Francisco. On July 18, 2019, by Motion No. 20484, the Planning Commission adopted findings pursuant to CEQA and a Mitigation Monitoring and Reporting Program ("MMRP"). This Motion is on file with the Clerk of the Board of Supervisors in File No. 2017-000663ENX. This Commission has reviewed the CPE, Addendum, and related documents, and adopts and incorporates by reference as though fully set forth herein the CEQA Findings and the MMRP.

WHEREAS, on July 18, 2019, by Resolution No. 20483, the Commission adopted findings in connection with its consideration of, among other things, the adoption of amendments to zoning text and map, as well as adoption of the 2000 Marin Street SUD, under CEQA, the State CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and made certain findings in connection therewith, which findings are hereby incorporated herein by this reference as if fully set forth.

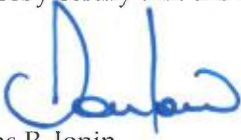
WHEREAS, on July 18, 2019, by Motion No. 20484 and No. 20485, the Commission adopted findings regarding the Project and Project Variant's consistency with the General Plan, Planning Code Section 101.1, and all other approval actions associated with the SUD and development therein.

NOW THEREFORE BE IT RESOLVED, that the Commission recommends approval of the Development Agreement, in substantially the form attached hereto as Exhibit A, subject to any additions and modifications that may be made by the Board of Supervisors.

AND BE IT FURTHER RESOLVED, that the Commission finds that the application, public notice, Planning Commission hearing, and Planning Director reporting requirements regarding the Development Agreement negotiations contained in Administrative Code Chapter 56 have been substantially satisfied in light of the meetings held for the last two years, the public informational meetings and hearings by the Planning Department staff at the Planning Commission, the provision of required public notices, and the information contained in the Director's Report.

AND BE IT FURTHER RESOLVED, that the Commission authorizes the Planning Director to take such actions and make such changes as deemed necessary and appropriate to implement this Commission's recommendation of approval and to incorporate recommendations or changes from other City agencies and/or the Board, provided that such changes do not materially increase any obligations of the City or materially decrease any benefits to the City contained in the Development Agreement attached as Exhibit A.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on July 18, 2019.



Jonas P. Ionin
Commission Secretary

AYES: Melgar, Koppel, Fung, Johnson, Moore, Richards

NOES: None

ABSENT: Hillis

ADOPTED: July 18, 2019