COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 22 – 2022
Adopted June 21, 2022

AUTHORIZING, AT A PUBLIC HEARING UNDER SECTION 33431 OF THE HEALTH AND SAFETY CODE, A DISPOSITION AND DEVELOPMENT AGREEMENT WITH F4 TRANSBAY PARTNERS LLC, A DELAWARE LIMITED LIABILITY COMPANY AND TRANSBAY BLOCK 4 HOUSING PARTNERSHIP, L.P., A CALIFORNIA LIMITED PARTNERSHIP, FOR THE PURCHASE OF BLOCK 4 OF ZONE ONE OF THE TRANSBAY REDEVELOPMENT PROJECT AREA (BLOCK 4) AND ADJACENT FUTURE TEHAMA STREET RIGHT OF WAY, AND DEVELOPMENT OF APPROXIMATELY 681 RESIDENTIAL UNITS INCLUDING 306 UNITS AFFORDABLE TO LOW- OR MODERATE-INCOME HOUSEHOLDS, GROUND FLOOR RETAIL, OPEN SPACE, STREETSCAPE IMPROVEMENTS AND UNDERGROUND PARKING; AND ADOPTING ENVIRONMENTAL REVIEW FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the "Community Redevelopment Law"), the Redevelopment Agency of the City and County of San Francisco ("Former Agency") undertook programs for the redevelopment of blighted areas in the City and County of San Francisco ("City"), including the Transbay Redevelopment Project Area ("Project Area"); and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") approved the Redevelopment Plan for the Transbay Redevelopment Project Area by Ordinance No. 124-05 (June 21, 2005) and by Ordinance No. 99-06 (May 9, 2006), as amended by Ordinance No. 84-15 (June 18, 2015) and Ordinance No. 62-16 (April 28, 2016) ("Redevelopment Plan"); and,

WHEREAS, The Redevelopment Plan establishes the land use controls that Successor Agency applies in the Project Area. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project ("Development Controls") define and regulate land uses, and Zone Two in which the San Francisco Planning Code applies. The Successor Agency solely administers and enforces land use entitlements for property and projects in Zone One and has delegated its authority over projects that do not require Successor Agency action in Zone Two to the San Francisco Planning Department pursuant to that certain Delegation Agreement between the Former Agency and the Planning Department for the Transbay Redevelopment Project Area (May 3, 2005); and,

WHEREAS, On August 4, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, as Document No. 2006-I224839 (the "Project Area Declaration of Restrictions"); and,

WHEREAS, Per the Redevelopment Plan and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement ("Pledge Agreement") between the Former Agency, the Transbay Joint Powers Authority ("TJPA"), and the City, land sale and net tax increment revenue generated by the parcels in the Project Area that are currently or formerly owned by the State of California ("State") has been pledged to the TJPA to help pay the cost of building the Transbay Transit Center. The State-Owned Parcels (as defined in the Pledge Agreement) include portions or the entirety of the development sites on Transbay Blocks 2 through 9, 11, and 12, and Parcels F, M, and T; and,

WHEREAS, California Public Resources Code Section 5027.1 requires that any redevelopment plan adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 25% of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60% of the area median income, and that at least an additional 10% of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120% of the area median income. Application of this project area objective may require that particular publicly owned parcels will have to be developed with a greater percentage of affordable housing units than 35% ("Transbay Affordable Housing Obligation"); and,

WHEREAS, In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation ("Caltrans"), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-Owned Parcels to the City and the TJPA ("Cooperative Agreement"). In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement ("Implementation Agreement") which requires the Former Agency to prepare and sell the formerly State-Owned Parcels and to implement the Redevelopment Plan, including, among other things, the construction and funding of new infrastructure improvements (such as parks and streetscapes) and compliance with the Transbay Affordable Housing Obligation. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property ("2008 Option Agreement"), which describes the process for the transfer of certain of these parcels to the Former Agency to facilitate the sale of the parcels and provide the TJPA with the Gross Sales Proceeds for funding of the Transbay Transit Center. The 2008 Option Agreement defines Gross Sales Proceeds as the final purchase price based on "consideration of Transbay Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably effect [sic] the fair market value."; and,

WHEREAS, On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency and required the transfer of certain of the Former Agency's assets and obligations to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco ("Successor Agency"), commonly known as the Office of Community Investment and Infrastructure ("OCII"). Cal. Health & Safety Code §§ 34170 et seq. ("Redevelopment Dissolution Law"). On June 27, 2012, the Redevelopment Dissolution Law was amended to clarify that successor agencies are separate public entities from the city or county that had originally established a redevelopment agency and they succeed to the organizational status of the former redevelopment agency to complete any work

related to an approved enforceable obligation. Cal. Health & Safety Code § 34173 (g); and,

WHEREAS, The Board of Supervisors, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12 (Oct. 4, 2012), which, among other matters: (a) acknowledged and confirmed that the Successor Agency is a separate legal entity from the City, and (b) established this Successor Agency Commission ("Commission") and delegated to it the authority to (i) implement, modify, enforce and complete the Former Redevelopment Agency's enforceable obligations; (ii) approve all contracts and actions related to the assets transferred to or retained by OCII, including, without limitation, the authority to exercise land use, development, and design approval, consistent with the applicable enforceable obligations; and (iii) take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and any other action that the Commission deems appropriate, consistent with the Redevelopment Dissolution Law, to comply with such obligations; and,

WHEREAS, On April 15, 2013, the California Department of Finance ("DOF") finally and conclusively determined, under Cal. Health & Safety Code § 34177.5(i), that the Pledge Agreement, Implementation Agreement, and Transbay Affordable Housing Obligation are continuing enforceable obligations of the Successor Agency under the Redevelopment Dissolution Law; and,

WHEREAS, The Transportation Infrastructure Finance and Innovation Act ("TIFIA") Loan Agreement between the TJPA, as borrower, and the United States Department of Transportation, as lender, dated January 1, 2010 (as amended, "TIFIA Loan"), and the TJPA's subsequent tax allocation bond issuance to refinance the TIFIA Loan and finance costs associated with construction and design of the Transbay Program (collectively, the "TJPA Bonds"), pledge (or may in the future pledge) certain property tax increment revenue attributable to certain former state-owned parcels ("Net Tax Increment"), including Block 4 (as defined below), in the Redevelopment Plan as security for the payment of the TJPA Bonds; and,

WHEREAS, Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5(a). This resolution authorizes the execution of a disposition and development agreement providing for the transfer of certain Successor Agency property to a third party, the development of market-rate and affordable housing, and the payment of proceeds to the TJPA, as part of Successor Agency's compliance with the pre-existing enforceable obligations under the Implementation Agreement and the Transbay Affordable Housing Obligation. DOF has confirmed that "any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized." Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, Successor Agency (Sep. 10, 2013, 09:17 am), attached to the DDA (defined below) as Attachment 2; and,

WHEREAS, Redevelopment Dissolution Law requires successor agencies to prepare a long range property management plan ("PMP") to dispose of its properties (Cal Health & Safety Code § 34191.5). The PMP must include an inventory of all successor agency properties, with information about date of acquisition, purpose of acquisition, parcel data, current value, revenue generation, environmental contamination, potential for transit-oriented development, and previous development proposals for each property. The PMP must also categorize each

property by one of four permissible uses: (1) retention for governmental use; (2) retention for future development; (3) disposition; or (4) use of the property to fulfill an enforceable obligation. OCII's PMP includes disposition plans for certain assets that OCII has retained to fulfill enforceable obligations, but that are proposed for transfer or sale. Accordingly, OCII's PMP categorizes a portion of Block 4 as follows: "Acquire and sell at market value to third-party developers pursuant to the Transbay Implementation Agreement," and, with respect to future ownership of certain other portions of Block 4, "Acquire and retain to fulfill Transbay enforceable obligations (i.e., to ensure these parcels are developed into affordable housing to meet the state-mandated 35% affordable housing requirement in Transbay)." The PMP was approved by Oversight Board Resolution Nos. 12-2013 (adopted November 25, 2013) and 14-2015 (adopted November 23, 2015), and finally approved by DOF in late 2015; and,

WHEREAS, The TJPA is responsible for implementing the Transbay Transit Center Program, which includes, among other things, (i) on the site of the former Transbay Terminal, the construction of a new Transit Center building ("Transit Center"), (ii) a rail tunnel and rail systems to extend Caltrain service from Fourth and King Streets to the Transit Center and to accommodate California High Speed Rail trains in the future, (iii) a new underground Fourth and Townsend Street Caltrain Station, (iv) modifications to the existing surface station at Fourth and King Streets, (v) a temporary bus terminal operated until the completion and occupancy of the Transit Center ("Temporary Terminal"), (vi) a bus ramp connecting the Bay Bridge to the Transit Center, and (vii) permanent bus storage facilities; and,

WHEREAS, Under the Cooperative Agreement, the TJPA acquired State-Owned Parcels O, O', and O" (collectively, former Lot 008 of Assessor's Block 3739) subject to a power of termination vested in Caltrans ("Caltrans Power of Termination"). These parcels comprise the majority of the city block bounded by Beale, Howard, Main, and Folsom Streets in San Francisco, California, which the TJPA used to operate the Temporary Terminal. The property described in Attachment 2 to the DDA (defined below), being Lot 10 of Assessor's Block 3739 and constituting approximately the northern third of the Temporary Terminal site, is identified as Block 4 under the Redevelopment Plan (and referred to herein as "Block 4" or the "Site"), which will be developed pursuant to the DDA (defined below) together with the property more particularly described in Attachment 3 to the DDA (defined below), being Lot 10 of Assessor's Block 3739 constituting the future public right of way immediately adjacent to the south of the Site (the "Tehama Parcel"). In 2015, the TJPA secured a loan for Transit Center construction with a lien on Block 4 and other property. Subsequently, the loan was repaid and Caltrans relinquished the Caltrans Power of Termination as it encumbered Block 4, pursuant to that certain document recorded on January 22, 2015 in the Official Records as document no. 2015-K010430-00; and,

WHEREAS, Under the 2008 Option Agreement, Successor Agency (as the successor to the Former Agency) has the exclusive and irrevocable option to acquire the entirety of Block 4 from the TJPA and/or to approve a transfer of Block 4 to a developer consistent with the terms of the 2008 Option Agreement. On January 15, 2021, the TJPA conveyed Block 4 and the Tehama Parcel to the Successor Agency in accordance with the 2008 Option Agreement; and,

WHEREAS, F4 Transbay Partners LLC, a Delaware limited liability company ("Developer") entered into an Agreement of Purchase and Sale for Real Estate dated March 3, 2016 with the TJPA ("Parcel F PSA") to acquire a formerly State-Owned Parcel in Zone Two of the Project Area (herein referred to as "Parcel F"). The Parcel F PSA was contingent on approval by the Commission and the Board of Supervisors of an option to purchase Block 4. Developer requested that the Successor Agency enter into a sole source option agreement for the purchase of Block 4 based, in part, on the Developer's qualifications and its proposal to develop Block 4 with a high level of affordable housing that met or exceeded 45 percent of the total number of residential units on the site; and,

WHEREAS, Pursuant to 65864 *et seq*. of the California Government Code, Developer has entered into a development agreement with the City for the development of Parcel F with a 61-story mixed-use building consisting of, among other things, 165 owned dwelling units, 189 hotel rooms, and approximately 276,000 square feet of office use floor area. Under the that certain Development Agreement by and between the City and Parcel F Owner, LLC Relative to the Development Known as 542-550 Howard Street (Transbay Parcel F) Development Project, dated September 30, 2021 and adopted by the Planning Commission (Resolution No. 2084 dated January 28, 2021) and Board of Supervisors (Ordinance No. 42-21 dated March 23, 2021) ("Development Agreement"), the Developer is required, upon the satisfaction of certain conditions, to pay an Affordable Housing Fee (as that term is defined in the Development Agreement) to the Successor Agency to fund the Successor Agency's obligation to fulfill the Transbay Affordable Housing Obligation. The Parties to the Development Agreement intend that the Affordable Housing Fee be used to subsidize the construction of the Mid-Rise Affordable Project (defined below); and,

WHEREAS, On June 22, 2016, Successor Agency, as optionor, and Developer, as optionee, entered into an Agreement for Option to Purchase Block 4 that was authorized by the Commission on April 19, 2016 (Commission Resolution No. 18-2016) and approved, under Cal. Health and Safety Code Section 33433 , by the Board of Supervisors on May 27, 2016 (Board Resolution No. 195-16), as evidenced by that certain Memorandum of Option Agreements recorded June 22, 2016, in the Official Records of the City as Document No. 2016-K277787-00, as amended by that First Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of September 16, 2019 and authorized by the Commission on September 18, 2018 (Resolution No. 38-2018), and approved by the TJPA Board on August 8, 2019 (Resolution No. 021-2019), and as further amended by that Second Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of December 15, 2020 and authorized by the Commission on the same date by Resolution No. 42-2020 and approved by the TJPA Board on January 14, 2021, by Resolution No. 004-2021, as further amended by that Third Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of July 1, 2021 and authorized by the Commission on June 15, 2021, by Resolution No. 23-2021 and approved by the TJPA Board on July 22, 2021, by Resolution No. 022-2021, and as further amended by that Fourth Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of October 1, 2021 and authorized by the Commission on September 21, 2021, by Resolution No. 31-2021 and approved by the TJPA Board on October 14, 2021, by Resolution No. 033-2021 (together as amended "Block 4 Option Agreement"); and,

WHEREAS, The Block 4 Option Agreement provides, among other things, that the Developer will "include, at no cost to OCII, the TJPA, or the City, at least forty five percent (45%) below-market-rate ("BMR") units on Block 4 plus . . . the transfer of affordable units required on Parcel F by the Redevelopment Plan and Planning Code in effect as of the date of this Agreement onto Block 4 ("Buyer's Inclusionary Obligation")." It also provides that OCII will have sole and absolute discretion to determine the total number and type of affordable units to be constructed on Block 4, as well as all other terms in this Agreement, except for the Block 4 sales price, which is determined by the amount or methodology established in the Option Agreement. The Block 4 Option Agreement includes a term sheet providing base terms for negotiation of this Agreement. Under the 2008 Option Agreement and Pledge Agreement with the TJPA, the Successor Agency transmits any proceeds from the sale of Block 4 to the TJPA for the construction of the Transit Terminal Project, as defined in the Pledge Agreement; and,

WHEREAS, Based on the Block 4 Option Agreement, OCII staff negotiated the terms of a disposition and development agreement ("DDA," attached hereto as Exhibit A) with the Developer and Transbay Block 4 Housing Partnership, L.P., a California limited partnership, for the sale of the Block 4 and conveyance of the land immediately adjacent to the Site ("Tehama Parcel") to Developer and construction of a residential development project with associated improvements on the Site and Tehama Parcel. The DDA provides for a purchase price of $6,000,000 and a residential development project ("Project") generally consisting of (a) a residential tower 552 feet in height (513 feet at the roof of the last occupiable floor plus a rooftop mechanical screening/parapet element of a maximum 39 feet in height), including an attached wing up to 71 feet in height, collectively containing 155 for-sale residential condominium units, 219 market-rate rental residential units and no fewer than 105 rental units affordable to households earning from 100 to 120 percent of area median income, neighborhood retail uses, amenities spaces, open spaces and related supporting spaces; (b) an affordable residential building a maximum of 179 feet in height (163 feet at the roof of the last occupiable floor, and a rooftop mechanical screening/parapet element of a maximum 16 feet in height) containing 201 rental units (and one managers unit) affordable to households earning from 40 to 100 percent of area median income, with supporting facilities, amenities, open spaces and neighborhood retail, (c) an approximately 66,496 square foot underground shared parking garage accommodating up to 275 private vehicles valet-parked and/or parked via stackers, two car share spaces and a parking for a minimum of 556 bicycles; (d) open space and streetscape improvements within and surrounding the Site and including the extension of Tehama Street on the Tehama Parcel; and,

WHEREAS, In accordance with Section 2.1(b) of the Block 4 Option Agreement, Successor Agency and Developer respectively prepared appraisals of the Site as conditioned and regulated under the Plan Amendment (defined below) and proposed DDA, and a Neutral Appraiser chosen in accordance with Section 2.1(b)(vi) of the Block 4 Option Agreement has identified the most reasonable purchase price for the Site as being Six Million Dollars ($6,000,000), which, with the concurrence of TJPA, constitutes the Purchase Price under the Block 4 Option Agreement and has been incorporated into the DDA as the purchase price for the Site; and

WHEREAS, Developer has requested amendments to the Redevelopment Plan (the "Plan Amendment") and the Development Controls (the "Development Controls Amendment") to allow the Project to be constructed in accordance with the design proposed by the Developer and described in detail in the DDA. The Plan

Amendment and the Development Controls Amendment increase certain height and bulk limits and amend other development standards on Block 4. The Plan Amendment must be transmitted to the San Francisco Planning Commission for its review and recommendation and to the San Francisco Board of Supervisors for its review and approval, the effectiveness of such approval by the Board of Supervisors being a condition to the effectiveness of this Resolution and the DDA approved hereunder; and,

WHEREAS, In connection with the review and approval of the Project, Developer has requested that the Successor Agency take a series of actions related to Block 4 and the Tehama Parcel, consisting of: (1) approval of the Plan Amendment, (2) approval of the amendments to the Development Controls, (3) this Resolution authorizing OCII to enter into the DDA, (4) conditional approval of Schematic Designs for the development of the Site, and (5) recommendations of related actions to agencies responsible therefor, including but not limited to the General Plan Amendment (defined below), Zoning Map Amendment (defined below), Plan Amendment, and approval of the sale of the Site by the Board of Supervisors of the City and County of San Francisco for the purpose of compliance with Section 4.7.2 of the Redevelopment Plan, which applies Section 33433 of the California Health and Safety Code to this Site (collectively, items 1 through 5 together with related actions of responsible agencies enumerated in the Addendum (defined below) are the "Proposed Actions"); and,

WHEREAS, Developer has applied to the San Francisco Planning Department requesting amendments to (i) the height classification for Block 4 in the Transit Center District Plan, a Sub Area Plan of the Downtown Plan (the "General Plan Amendment") and (ii) the height classification for Block 4 in the Planning Code's Height Map (the "Zoning Map Amendment"). The General Plan Amendment and the Zoning Map Amendment will provide for consistency between the General Plan, Planning Code, and the Redevelopment Plan and Development Controls (as amended), and will allow the Project to be constructed in accordance with the design proposed by the Developer and described in detail in the DDA. The General Plan Amendment and Zoning Map Amendment must be reviewed and approved by the San Francisco Planning Commission and the San Francisco Board of Supervisors, the effectiveness of such approval being a condition to the effectiveness of this Resolution and the DDA approved hereunder; and,

WHEREAS, On June 21, 2022, the Commission adopted Resolution No. __-2022 by which the Commission determined that the Final Environmental Impact Statement/ Environmental Impact Report for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project (the "FEIS/EIR" as defined in said resolution), together with further analysis provided in Addendum No. 9 to the FEIS/EIR (the "Addendum" as defined in said resolution), remains adequate, accurate, and objective and in compliance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq., and the CEQA Guidelines (14 California Code of Regulations Sections 15000 et seq., collectively "CEQA") for purposes of evaluating the potential environmental effects of the Proposed Actions (including approval of the DDA and construction of the Project thereunder); and,

WHEREAS, The environmental effects of the DDA and development of the Project thereunder have been analyzed in the environmental documents as described in Commission Resolution No. 18-2022. Copies of the FEIS/EIR and Addendum No. 9 are on file with the Commission Secretary; and,

WHEREAS, OCII staff has reviewed the DDA and, in accordance with its Commission Memorandum and supporting information provided to the Commission and incorporated herein by reference, finds it acceptable and recommends approval thereof; now therefore be it

RESOLVED, That in Resolution No. 18-2022, the Commission adopted findings that the Proposed Actions, including the DDA and construction of the Project thereunder, are in compliance with CEQA, said findings, which are on file with the Commission Secretary, being in furtherance of the actions contemplated in this Resolution and made part of this Resolution by reference herein; and, be it further

RESOLVED, That for the purposes of compliance with CEQA, the Commission hereby adopts the findings and determinations set out in Resolution No. 18-2022, adopted concurrently herewith, that the DDA and construction of the Project thereunder is within the scope of the project analyzed by the FEIS/EIR and Addendum No. 9; and, be it further

RESOLVED, That concurrently with adopting this Resolution, the Commission has, pursuant to Cal. Health and Safety Code Section 33431, held a public hearing to consider its proposal to enter into the DDA for the sale of property within the Project Area without public bidding therefore, and be it further

RESOLVED, The Commission hereby authorizes the Executive Director to (i) execute the DDA with F4 Transbay Partners LLC, a Delaware limited liability company and Transbay Block 4 Housing Partnership, L.P., a California limited partnership, substantially in the form approved by the Successor Agency's General Counsel and attached as Exhibit A, and (ii) enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction with respect to the Project as described in the DDA and this Resolution; provided that the effectiveness of the DDA is subject to the effectiveness of the General Plan Amendment, Zoning Map Amendment, and Plan Amendment and approval of the sale of the Site by the Board of Supervisors of the City and County of San Francisco for the purpose of compliance with Cal. Health and Safety Code Section 33433.

I hereby certify that the foregoing resolution was adopted by the Successor Agency Commission at its meeting of June 21, 2022.

Commission Secretary

EXHIBIT A: DISPOSITION AND DEVELOPMENT AGREEMENT – (Transbay Block 4)

Free Recording Requested Pursuant to Government Code Section 27383 and 27388.1 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Development Services Manager

Assessor's Block 3739, Lots 010 & 011 Space Above This Line Reserved for Recorder's Use

DISPOSITION AND DEVELOPMENT AGREEMENT
(Transbay Block 4)

by and between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California

and

F4 TRANSBAY PARTNERS LLC, a Delaware limited liability company

and

TRANSBAY BLOCK 4 HOUSING PARTNERSHIP, L.P.,
a California limited partnership

FOR THE SALE AND DEVELOPMENT OF TRANSBAY BLOCK 4
(ASSESSOR'S BLOCK 3739, LOTS 010 AND 011)

Dated as of June __, 2022

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ATTACHMENTS TO AGREEMENT

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into as of October _____, 2022 and is effective as of the Effective Date (as defined below), by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure ("**Successor Agency**"), F4 TRANSBAY PARTNERS LLC, a Delaware limited liability company ("**Developer**"), and TRANSBAY BLOCK 4 HOUSING PARTNERSHIP, L.P., a California limited partnership ("**Affordable Developer**") (collectively, the "**Parties**"). Developer and Affordable Developer are referred to from time to time herein as "**Developers**." The Parties agree as follows:

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California, the Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (the "**Project Area**").

B. The Board of Supervisors of the City and County of San Francisco ("**Board of Supervisors**") approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco ("**Official Records**") as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 18, 2015) as Document No. 2015-K135871, and as amended by Ordinance No. 62-16 (April 19, 2016), as Document No. 2016-K333253, and as it may be amended from time to time (the "**Redevelopment Plan**").

C. The Redevelopment Plan establishes the land use controls that Successor Agency applies in the Project Area. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) ("**Development Controls**" or "**DCDG**") define land uses, and Zone Two in which the San Francisco Planning Code applies. Successor Agency solely administers and enforces land use entitlements for property and projects in Zone One and has delegated its authority over projects that do not require Successor Agency action in Zone Two to the San Francisco Planning Department pursuant to that certain Delegation Agreement between the Former Agency and the Planning Department for the Transbay Redevelopment Project Area (May 3, 2005).

D. On August 4, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, as Document No. 2006-I224839 (the "**Project Area Declaration of Restrictions**").

E. Per the Redevelopment Plan and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement ("**Pledge Agreement**") between the Former Agency, the Transbay Joint Powers Authority ("**TJPA**"), and the City and County of San Francisco (the "**City**"), land sale and net tax increment revenue generated by the parcels in the Project Area that are currently or formerly owned by the State of California ("**State**") has been pledged to the TJPA to help pay the cost of building the Transbay Transit Center. The State-Owned Parcels (as defined in the Pledge Agreement) include portions or the entirety of the development sites on Blocks 2 through 9, 11, and 12, and Parcels F, M, and T.

F. California Public Resources Code Section 5027.1 requires that any redevelopment plan

adopted to finance, in whole or in part, the demolition of the Transbay Terminal building and the construction of a new terminal, including its associated vehicle ramps, shall ensure that at least 25% of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60% of the area median income, and that at least an additional 10% of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120% of the area median income. Application of this project area objective may require that particular publicly owned parcels will have to be developed with a greater percentage of affordable housing units than 35% ("**Transbay Affordable Housing Obligation**").

G. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation ("**Caltrans**"), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-Owned Parcels to the City and the TJPA ("**Cooperative Agreement**"). In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement ("**Implementation Agreement**") which requires the Former Agency to prepare and sell the formerly State-Owned Parcels and to implement the Redevelopment Plan, including, among other things, the construction and funding of new infrastructure improvements (such as parks and streetscapes) and compliance with the Transbay Affordable Housing Obligation. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property ("**2008 Option Agreement**"), which describes the process for the transfer of certain of these parcels to the Former Agency to facilitate the sale of the parcels and provide the TJPA with the Gross Sales Proceeds for funding of the Transbay Transit Center. The 2008 Option Agreement defines Gross Sales Proceeds as the final purchase price based on "consideration of Transbay Redevelopment Plan development restrictions, environmental contamination, legally required affordable housing, and other conditions which reasonably effect [sic] the fair market value." 2008 Option Agreement, § 6.1 at page 7.

H. On February 1, 2012, the State of California dissolved all redevelopment agencies, including the Former Agency, by operation of law pursuant to California Health and Safety Code Sections 34170 et seq. ("**Redevelopment Dissolution Law**"). Under the authority of the Redevelopment Dissolution Law and under San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission ("**Commission**") and delegating to it state authority under the Redevelopment Dissolution Law), the Successor Agency is administering the enforceable obligations of the Former Agency.

I. On April 15, 2013, the California Department of Finance ("**DOF**") finally and conclusively determined, under Cal. Health & Safety Code § 34177.5 (i), that the Pledge Agreement, Implementation Agreement, and Transbay Affordable Housing Obligation are continuing enforceable obligations of the Successor Agency under the Redevelopment Dissolution Law. A copy of DOF's Transbay Final and Conclusive Determination is attached as Attachment 1.

J. The Transportation Infrastructure Finance and Innovation Act ("**TIFIA**") Loan Agreement between the TJPA, as borrower, and the United States Department of Transportation, as lender, dated January 1, 2010 (as amended, "**TIFIA Loan**"), and the TJPA's subsequent tax allocation bond issuance to refinance the TIFIA Loan and finance costs associated with construction and design of the Transbay Program (collectively, the "**TJPA Bonds**"), pledge (or may in the future pledge) certain property tax increment revenue attributable to certain former state-owned parcels ("**Net Tax Increment**"), including Block 4 (as defined below), in the Redevelopment Plan as security for the payment of the TJPA Bonds.

K. Redevelopment Dissolution Law authorizes successor agencies to enter into new agreements if they are "in compliance with an enforceable obligation that existed prior to June 28, 2011." Cal. Health & Safety Code § 34177.5(a). This Agreement, providing for the transfer of certain Successor

Agency property to a third party, the development of market-rate and affordable housing, and the payment of proceeds to the TJPA, is part of Successor Agency's compliance with the pre-existing enforceable obligations under the Implementation Agreement and the Transbay Affordable Housing Obligation. DOF has confirmed that "any sale, transfer, or conveyance of property related to [the Transbay Final and Conclusive Determination] is authorized." Email from Justyn Howard, Assistant Program Budget Manager, DOF, to Tiffany Bohee, Executive Director, Successor Agency (Sep. 10, 2013, 09:17 am), attached as Attachment 2.

L. The TJPA is responsible for implementing the Transbay Transit Center Program, which includes, among other things, (i) on the site of the former Transbay Terminal, the construction of a new Transit Center building ("**Transit Center**"), (ii) a rail tunnel and rail systems to extend Caltrain service from Fourth and King Streets to the Transit Center and to accommodate California High Speed Rail trains in the future, (iii) a new underground Fourth and Townsend Street Caltrain Station, (iv) modifications to the existing surface station at Fourth and King Streets, (v) a temporary bus terminal operated until the completion and occupancy of the Transit Center ("**Temporary Terminal**"), (vi) a bus ramp connecting the Bay Bridge to the Transit Center, and (vii) permanent bus storage facilities.

M. Under the Cooperative Agreement, the TJPA acquired State-Owned Parcels O, O', and O" (collectively, former Lot 008 of Assessor's Block 3739) subject to a power of termination vested in Caltrans ("**Caltrans Power of Termination**"). These parcels comprise the majority of the city block bounded by Beale, Howard, Main, and Folsom Streets in San Francisco, California, which the TJPA used to operate the Temporary Terminal. The property described in Attachment 2 hereto, being approximately the northern third of the Temporary Terminal site, is identified as Block 4 under the Redevelopment Plan (and referred to herein as "**Block 4**" or the "**Site**"), which will be developed hereunder together with the future public right of way immediately adjacent to the south of the Site (the "**Tehama Parcel**", which is more particularly described in Attachment 3). In 2015, the TJPA secured a loan for Transit Center construction with a lien on Block 4 and other property. Subsequently, the loan was repaid and Caltrans relinquished the Caltrans Power of Termination as it encumbered Block 4, pursuant to that certain document recorded on January 22, 2015 in the Official Records as document no. 2015-K010430-00.

N. Under the 2008 Option Agreement, Successor Agency (as the successor to the Former Agency) has the exclusive and irrevocable option to acquire the entirety of Block 4 from the TJPA. Successor Agency has discretion, consistent with the terms of the 2008 Option Agreement, to approve a transfer of Block 4 to a developer. Development of Block 4 must comply with the Redevelopment Plan, the Development Controls, and the enforceable obligations covered by the Transbay Final and Conclusive Determination. The Redevelopment Plan and the Development Controls require residential development on Block 4 once it is no longer needed for the Temporary Terminal.

O. The Developer, F4 Transbay Partners, LLC, consists of Hines Urban F4, LLC, as managing member, and Broad Street Principal Investments, LLC and Affiliates, as member. Hines Urban F4, LLC, consists of Hines and Affiliates as managing member, and Urban Pacific Development, LLC, as member.

P. The Developer entered into an Agreement of Purchase and Sale for Real Estate dated March 3, 2016 with the TJPA ("**Parcel F PSA**") to acquire a formerly State-Owned Parcel in Zone Two of the Project Area (herein referred to as "**Parcel F**"). The Parcel F PSA was contingent on approval by the Commission and the Board of Supervisors of an option to purchase Block 4. Developer requested that the Successor Agency enter into a sole source option agreement for the purchase of Block 4 based, in part, in the Developer's qualifications and its proposal to develop Block 4 with a high amount of affordable housing that met or exceeded 45 percent of the total number of residential units on the site.

Q. Pursuant to 65864 *et seq*. of the California Government Code, Developer has entered into a development agreement with the City for the development of Parcel F with a 61-story mixed-use building consisting of, among other things, 165 owned dwelling units, 189 hotel rooms, and approximately 276,000 square feet of office use floor area. Under the that certain Development Agreement by and between the City and Parcel F Owner, LLC Relative to the Development Known as 542-550 Howard Street (Transbay Parcel F) Development Project, dated September 30, 2021 and adopted by the Planning Commission (Resolution No. 2084 dated January 28, 2021) and Board of Supervisors (Ordinance No. 42-21 dated March 23, 2021), the Developer is required, upon the satisfaction of certain conditions, to pay an Affordable Housing Fee (as that term is defined in the development agreement) to the Successor Agency to fund the Successor Agency's obligation to fulfill the Transbay Affordable Housing Obligation. The Parties intend that the Affordable Housing Fee be used to subsidize the construction of the Mid-Rise Affordable Project.

R. On June 22, 2016, Successor Agency, as optionor, and Developer, as optionee, entered into an Agreement for Option to Purchase Block 4 that was authorized by the Commission on April 19, 2016 (Commission Resolution No. 18-2016) and approved, under Section 33433 of the Health and Safety Code, by the Board of Supervisors on May 27, 2016 (Board Resolution No. 195-16), as evidenced by that certain Memorandum of Option Agreements recorded June 22, 2016 in the Official Records of the City as Document No. 2016-K277787-00, as amended by that First Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of September 16, 2019, that was authorized by the Commission on September 18, 2018 (Resolution No. 38-2018) and approved by the TJPA Board on August 8, 2019 (Resolution No. 021-2019) and as further amended by that Second Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of December 15, 2020, that was authorized by the Commission on the same date by Resolution No. 42-2020 and approved by the TJPA Board on January 14, 2021 by Resolution No. 004-2021, as further amended by that Third Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of July 1, 2021, that was authorized by the Commission on June 15, 2021 by Resolution No. 23-2021 and approved by the TJPA Board on July 22, 2021 by Resolution No. 022-2021, and as further amended by that Fourth Amendment to Agreement for Option to Purchase Block 4, dated for reference purposes as of October 1, 2021, that was authorized by the Commission on September 21, 2021 by Resolution No. 31-2021 and approved by the TJPA Board on October 14, 2021 by Resolution No. 033-2021 (together as amended "**Block 4 Option Agreement**").

S. The Block 4 Option Agreement provides, among other things, that the Developer will "include, at no cost to OCII, the TJPA, or the City, at least forty five percent (45%) below-market-rate ("**BMR**") units on Block 4 plus . . . the transfer of affordable units required on Parcel F by the Redevelopment Plan and Planning Code in effect as of the date of this Agreement onto Block 4 ("**Buyer's Inclusionary Obligation**")." [Block 4 Option Agreement at p. 5]. It also provides that OCII will have sole and absolute discretion to determine the total number and type of affordable units to be constructed on Block 4, as well as all other terms in this Agreement, except for the Block 4 sales price, which is determined by the amount or methodology established in the Option Agreement. The Block 4 Option Agreement includes a term sheet providing base terms for negotiation of this Agreement. Under the 2008 Option Agreement and Pledge Agreement with the TJPA, the Successor Agency transmits any proceeds from the sale of Block 4 to the TJPA for the Transit Center construction.

T. The Developer requested an amendment to the Redevelopment Plan Exhibit 4: Zone One Plan Map, to increase the maximum overall height limit on Block 4 from 450 feet to 513 feet and to increase the maximum building floor plate sizes applicable to Block 4:(a) from 7,500 square feet to13,500 square feet for buildings 85 feet to 250 feet in height, and (b) from 13,000 square feet to 15,200 square feet for buildings over 500 feet in height but limited to that portion of the building that is between 85 feet and 122 feet in height ("**Plan Amendment**"), together with an amendment to the Development Controls to, among other matters, reflect the Plan Amendment as well as to increase the maximum Townhouse, Podium 1 and Podium 2 height ranges on Block 4 from 50, 65 and 85 feet, respectively, to 71, 163 and 115 feet

("**Development Controls Amendment**"). The Commission approved the Plan Amendment by Resolution No. X-2022 (_____, 2022), and the Development Controls Amendment by Resolution No. XX-2022 (_____, 2022). On _____, 2022, the City's Planning Commission determined by Motion No. XXXXX that the Plan Amendment conforms to the San Francisco General Plan. On _____, 2022, the Board of Supervisors adopted Ordinance No. XXX-22 approving the Plan Amendment. The Plan Amendment and Development Controls Amendment become effective 90 days after enactment of the ordinance approving the Plan Amendment. Cal. Health & Safety Code § 33378(b)(2) and 33450. All references hereinafter to the Redevelopment Plan shall mean the Redevelopment Plan as amended by the Plan Amendment, and references to the Development Controls shall mean the Development Controls as amended by the Development Controls Amendment.

U. The scope of development for both the Site and the Tehama Parcel is fully described in Attachment 4 ("**Scope of Development**"). This generally includes the following improvements, each as more particularly described in the Scope of Development: (a) an approximately 155-unit market-rate residential condominium component consisting of approximately 135 for-sale residential condominium units and 20 adjacent condominium townhouses (the "**Tower Market-Rate Condominium Project**") (together, the residential condominium units and the condominium townhouses in the Tower Market-Rate Condominium Project are referred to as the "**Residential Condominium Units**"); (b) a residential rental component consisting of approximately 219 market-rate rental residential units and no fewer than 105 rental units affordable to households earning from 100 to 120 percent of area median income, (the "**Tower Mixed-Income Rental Project**", and together with the Tower Market-Rate Condominium Project, the "**Tower Project**"); (c) an affordable housing component consisting of no fewer than 202 rental units (including one manager's unit and 201 rental Affordable Housing Units) within a mid-rise building adjacent to the tower, affordable to households earning from 40 to 100 percent of area median income ("**Mid-Rise Affordable Project**") (together, the BMR units in the Tower Mixed-Income Rental Project and in the Mid-Rise Affordable Project are referred to as the "**Affordable Housing Units**"); (d) Streetscape Improvements surrounding the Site and including the extension of Tehama Street on the Tehama Parcel; (e) approximately 8,389 square feet of ground-floor retail space along Main, Howard, Tehama and Beale Streets (the "**Commercial Units**"), including approximately 6,431 square feet located on the ground floor of the Mid-Rise Affordable Project reserved for Community Commercial Space; (f) approximately 5,850 square feet of Public Open Space and 11,016 square feet of Project Open Space ; (g) an approximately 66,496 square foot underground "**Shared Parking Garage**" accommodating up to 275 private vehicles valet-parked and/or parked via stackers and a minimum of 556 secured bicycle parking spaces. Items (a) through (g), as further described in the Scope of Development, are collectively referred to as the "**Improvements.**"

V. Pursuant to that certain Transfer Map dated May 2021 and recorded July 1, 2021 in the Official Records of the City as Document No. 2021105647, Successor Agency has assembled the Site and the Tehama Parcel for conveyance.

W. On January 12, 2021, TJPA transferred that portion of the Temporary Terminal site constituting the Site and the Tehama Parcel to Successor Agency pursuant to the 2008 Option Agreement and the Agreement for Purchase and Sale between the TJPA and Successor Agency (August 18, 2020), and the Parties intend the that the Site and the Tehama Parcel will be transferred from Successor Agency to Developer on or before the Outside Date for Close of Escrow in accordance with this Agreement. The Parties intend that the Developer will seek permanent subdivision of Block 4 and the Tehama Parcel generally as follows: (i) an airspace parcel for the Mid-Rise Affordable Project that may include the commercial space dedicated to Public Benefit and Community Serving Commercial uses ("**Affordable Air Rights Parcel,**" or if separated from the Affordable Air Rights Parcel pursuant to Section 9.09(b), the "Commercial Subdivision" as defined therein), (ii) the Tehama Parcel (which will be subject to an offer of dedication in fee together with the public improvements thereon to the City); and (iii) the remainder of the Site, which Developer intends to subdivide generally consistent with the Development Program depicted

in Attachment 5, "**Development Program**". These foregoing subdivision actions are collectively defined as the "**Permanent Subdivision of the Site**." Concurrent with recordation of the final subdivision map reflecting the Permanent Subdivision of the Site, the Parties intend that the Developer will convey the Affordable Air Rights Parcel back to the Successor Agency as described in Section 2.04(g) below.

X. In connection with the conveyance of the Affordable Air Rights Parcel to the Successor Agency as described above, the Successor Agency intends to enter into a lease of the Affordable Air Rights Parcel with the Affordable Developer (the "**Air Rights Lease**"). When construction of the Improvements located within the Affordable Air Rights Parcel is complete and the Successor Agency has issued a Certificate of Completion with respect to such Improvements, the Successor Agency will assign the title to the Affordable Air Rights Parcel and the lessor's interest in the Air Rights Lease to the Mayor's Office of Housing and Community Development ("**MOHCD**"), as the housing successor under Redevelopment Dissolution Law.

Y. In connection with the construction of the Tehama Parcel and as may be further made a condition of approval of the Permanent Subdivision of the Site, the Successor Agency intends that the Developer will enter into a public improvement agreement ("**PIA**") with the City for the purpose of constructing the required infrastructure and conveying a public street that meets the City's standard for acceptance.

Z. Together with its amendment to the Redevelopment Plan for the Project, the City's Board of Supervisors adopted findings consistent with Health & Safety Code Section 33433 (as applicable under Section 4.7.2 of the Redevelopment Plan) that the Purchase Price established by this Agreement is not less than the "fair market value" or "fair reuse value" for Block 4, pursuant to Resolution No. [XX] enacted [_____], 2022.

AA. This Agreement contemplates a sole source sale of the Site to Developer and the Successor Agency has complied with the procedural requirements for notice and public hearing required by Section 33431 of the Health and Safety Code;

BB. Furthermore, the proposed sale is consistent with the disposition plan for the Site that was included in Successor Agency's Property Management Plan ("**PMP**"), which was prepared in accordance with the requirements of Redevelopment Dissolution Law. The PMP was approved by Oversight Board Resolution Nos. 12-2013 (adopted November 25, 2013) and 14-2015 (adopted November 23, 2015), and finally approved by DOF on December 7, 2015.

CC. The parties wish to enter into this Agreement to complete the sale of the Site and conveyance of the Tehama Parcel to Developer and authorize construction of the Improvements on the Site and Tehama Parcel.

ARTICLE 1 - CONTRACT TERMS

1.01 Purchase Price

(a) The purchase price for the Site shall be SIX MILLION AND 00/100 DOLLARS ($6,000,000.00) (the "**Purchase Price**").

(b) The Developer shall deposit the Purchase Price, in cash or immediately available funds, into Escrow on the date established by the Parties for the Close of Escrow in the escrow instructions delivered by the parties pursuant to Section 2.03, but in any event no later than the Outside Date for Close of Escrow. The Purchase Price shall be paid to an account designated by the TJPA in one lump sum

simultaneously with transfer of title to the entire Site and Tehama Parcel to Developer. If Developer is not able to pay the Purchase Price as required in this Section 1.01(b), an additional TWELVE THOUSAND AND 00/100 ($12,000.00) shall be added to the Purchase Price for each calendar day of delay until the Close of Escrow (the "**Additional Purchase Payment**").

1.02 Good Faith Deposit

Within ten (10) days after the Effective Date of this Agreement, Developer shall deposit into Escrow a good faith deposit in the amount of TWO MILLION AND 00/100 DOLLARS ($2,000,000.00) (the "**Good Faith Deposit**") in cash or immediately available funds. The Good Faith Deposit shall be in addition to, and not be credited toward, the Purchase Price. If the Parties close on the purchase-sale of the Site and conveyance of the Tehama Parcel and Developer achieves Commencement of Substantial Construction, as defined in Section 4.08(b), Successor Agency shall refund the Good Faith Deposit to Developer, less any amounts due under Section 12.01 for then past-due and unpaid Successor Agency Costs. None of the $600,000.00 deposit paid under the Block 4 Option Agreement or any other amounts paid by Developer during the term of the Block 4 Option Agreement for the costs of Successor Agency shall be credited against the Good Faith Deposit or otherwise refunded.

1.03 Redevelopment Plan and Project Area Declaration of Restrictions

Development on the Site and Tehama Parcel is subject to all the terms and conditions of the Redevelopment Plan and the Project Area Declaration of Restrictions. The Site and Tehama Parcel are located within Zone One as described in the Redevelopment Plan and the Development Controls, both of which determine the land use designation and controls for the Site and Tehama Parcel.

1.04 Term of this Agreement

The term of this Agreement will begin on the Effective Date and continue until the earlier of termination in accordance with its terms or Successor Agency's issuance and recordation of a Certificate of Completion as provided in Section 4.13 (the "**Term**"), subject to the surviving provisions set forth in Section 5.12.

1.05 Affordable Developer

The Affordable Developer is Transbay Block 4 Housing Partnership, L.P, a limited partnership made up of Mercy Housing California, a California nonprofit (as managing general partner), F4 Transbay Partners LLC, a Delaware limited liability company (as administrative general partner), and a Low-Income Housing Tax Credit investor limited partner.

ARTICLE 2 - CONVEYANCE TERMS

2.01 Purchase and Development

Subject to all of the terms, covenants and conditions of this Agreement, and Community Redevelopment Law as amended by Redevelopment Dissolution Law, Successor Agency agrees to sell and convey the Site to Developer for the Purchase Price and convey the Tehama Parcel in accordance with this Agreement, and Developer agrees to purchase the Site from Successor Agency and pay the Purchase Price to Successor Agency in accordance with the provisions of Section 1.01(a) above and accept the Tehama Parcel and perform all applicable obligations thereto in accordance with this Agreement. In accordance with this Agreement, from and after the Close of Escrow, Developer shall diligently pursue and prosecute

the development, construction, maintenance and operation of the Improvements on the Site and the Tehama Parcel, subject to applicable laws.

2.02 Tehama Parcel

Developer acknowledges and covenants that the Tehama Parcel is being conveyed to Developer solely for the purposes of enabling Developer to complete its obligations to construct all Improvements specified for the Tehama Parcel in the Scope of Development, and that fee title to the Tehama Parcel, including all Improvements constructed thereon in accordance with this Agreement, shall be offered to the City via the Permanent Subdivision of the Site in accordance with all applicable provisions of the City's Subdivision Code and Subdivision Regulations. Except as consistent with this Section 2.02 and Section 5.06, Developer may not convey, in whole or in part, the Tehama Parcel and may not subject the Tehama Parcel to any lien or encumbrance except those approved in advance by the Successor Agency in its sole discretion.

2.03 Escrow

(a) Open, Close of Escrow. Developer shall establish an escrow with Chicago Title Company or such other reputable title company doing business in the City and County of San Francisco as may be selected by Developer and approved by Successor Agency ("**Title Company**") and shall notify Successor Agency in writing upon establishing such escrow ("**Escrow**"). At least fifteen (15) business days prior to the date the Parties' intend for Close of Escrow, but in any event no later than 15 business days prior to the Outside Date for Close of Escrow, Successor Agency and Developer each shall provide escrow instructions to the Title Company as shall be necessary and consistent with this Agreement governing Close of Escrow; at the same time, providing copies to each other. The "**Close of Escrow**" is defined as the consummation of the sale completed herein in accordance with the escrow instructions provided by Developer and Successor Agency. Except to the extent this Agreement provides otherwise, at least one (1) business day prior to the date the Parties intend for Close of Escrow, but in any event no later than one (1) business day prior to the Outside Date for Close of Escrow, the Parties shall each deposit into Escrow all documents and instruments that such party is obligated to deposit into Escrow in accordance with this Agreement.

(b) Outside Date for Close of Escrow. Close of Escrow (including all transactions contemplated therein) shall be completed no later than the "**Outside Date for Close of Escrow**" specified in the Schedule of Performance. The Outside Date for Close of Escrow shall not be extended except (i) for the failure to fulfill one or more of the conditions precedent in Section 2.07 (except failure to fulfill Section 2.07(b)(iv), which is subject to Section 8.08(b)) on or prior to the Outside Date for Close of Escrow where such failure is beyond the control of the Party responsible for the satisfaction of such condition; or (ii) as otherwise provided in this Agreement. In the event the Outside Date for Close of Escrow is extended as provided in this subsection 2.03(b)(i), Developer may request that Successor Agency approve, subject to its reasonable discretion, an extension of any remaining applicable dates set forth in the Schedule of Performance (and, if applicable, Schedule of Important Project Dates) that are not calculated or measured from the Close of Escrow or Outside Date for Close of Escrow.

(c) Title, Escrow and Closing Costs. Developer shall pay to the Title Company or the appropriate payee thereof all title report costs; title insurance premiums and endorsement charges as requested by Developer; recording fees; and any escrow fees in connection with the conveyances contemplated under this Agreement.

2.04 Title

(a) The escrow instructions shall provide that upon the Close of Escrow the Title Company shall provide and deliver to Developer an owner's title insurance policy ("**Title Policy**") (which at Developer's option may be an ALTA owner's policy) issued by the Title Company in an amount reasonably designated by Developer, at the sole cost and expense of Developer, insuring that fee simple title to the Site and the Tehama Parcel is vested in Developer, without any liens, encumbrances, or other matters affecting title except for the title conditions set forth in Attachment 8 ("**Approved Title Conditions**").

(b) Developer shall be entitled to request that the Title Company provide such endorsements (or amendments) to the Title Policy as Developer may reasonably require, provided that the same shall (a) be at no cost to Successor Agency, (b) impose no material or non-customary additional liability on Successor Agency, and (c) not cause a delay in the Close of Escrow.

(c) Developer shall bear all cost and responsibility for any required compliance with applicable laws related to the acquisition of the Site and Tehama Parcel, including, but not limited to, the Subdivision Map Act, the Destroyed Land Records Relief Act, and all other federal, state, and local laws applicable to the development of the Site and Tehama Parcel.

(d) If Developer elects to secure an ALTA owner's policy, Successor Agency shall cooperate with Developer to secure such policy by providing surveys and engineering studies in its possession or control, if any, at no cost to Successor Agency and without warranty of any kind, which relate to or affect the condition of title. The responsibility of Successor Agency assumed by this paragraph is limited to providing such surveys and engineering studies, if any. Developer shall be responsible for securing any other surveys and engineering studies at its sole cost and expense. Successor Agency shall also execute an Owner's Affidavit in the form set forth on Attachment 9, or in such commercially reasonable form required by the Title Company.

(e) Upon satisfaction of all conditions precedent established by this Agreement and the parties' escrow instructions, Successor Agency shall convey to Developer fee simple title to the Site and Tehama Parcel by Grant Deed, in substantially the form attached hereto as Attachment 10 ("**Grant Deed**"), free and clear of any liens, encumbrances and other matters affecting title except for the Approved Title Conditions. Developer shall provide Successor Agency with an executed and acknowledged Developer's Quitclaim Deed. Successor Agency and Developer shall work in good faith to obtain whatever additional assurances are necessary from any City department or agency, including the Department of Public Works and the City Surveyor, to enable Successor Agency to convey marketable and insurable title to the Site and Tehama Parcel.

(f) Concurrently with the recordation of the Grant Deed, the parties shall cause the recordation of a declaration of site restrictions in substantially the form of Attachment 11 (the "**Declaration of Site Restrictions**"), which shall include, among other things, the affordability and eligibility restrictions described in Section 5.05 below and such Declaration of Site Restrictions shall unless otherwise permitted by OCII (1) be in a first lien position and (2) not be subordinated to any lien or other encumbrance during the term of such restrictions.

(g) Following the Close of Escrow, Developer shall control and pursue the Permanent Subdivision of the Site in accordance with the requirements of this Agreement. Concurrently with recordation of a final subdivision map reflecting the Permanent Subdivision of the Site, Developer shall convey the Affordable Air Rights Parcel to Successor Agency free of encumbrances except those encumbrances required for the construction of the Improvements and those encumbrances previously

approved in writing by the Successor Agency. Prior to or after the conveyance of the Affordable Air Rights Parcel, as determined by the Successor Agency: (i) Successor Agency and Affordable Developer shall execute the Air Rights Lease, substantially in the form attached hereto as Attachment 12, and (ii) pursuant to Section 9.11 of this Agreement, the Parties shall cause to be executed and recorded covenants, conditions and restrictions and the REA (as defined in Section 9.11 below); provided, however, that Permanent Subdivision of the Site, the conveyance of the Affordable Air Rights Parcel and the execution of the Air Rights Lease, and the execution and recordation of the REA shall occur prior to or on the date of the closing of Developer's construction financing for the Improvements.

2.05 Taxes and Assessments

Ad valorem taxes and assessments levied, assessed or imposed from and after Close of Escrow shall be the responsibility of Developer.

2.06 Access and Entry by Developers to the Site and Tehama Parcel/Permit to Enter

(a) The Successor Agency represents and warrants to Developer that it has furnished to Developer copies of all existing surveys, environmental reports, inspection reports, and any other writings or data pertaining to the physical condition of the Site which are in the Successor Agency's possession or control. The Successor Agency shall assist Developer in obtaining any such reports or data in the possession and control of the TJPA.

(b) Prior to obtaining the fee title interest in the Site at Close of Escrow, Developers and their representatives shall, subject to the terms of the "**Permit to Enter**" attached to this Agreement as Attachment 13 have the right of access to and entry upon the Site, from time to time and at all reasonable times, for the purpose of obtaining data and making surveys and tests, including site tests and soil borings, necessary to carry out the purposes of this Agreement.

2.07 Conditions Precedent to Close of Escrow

(a) Conditions to Developer's Obligation to Close. The following are conditions to Developer's obligations to close Escrow (the "**Developer Conditions**"), to the extent not expressly waived by Developer:

(i) There shall not be an uncured Event of Default (as defined in Sections 8.01 and 8.02 as applicable) by Successor Agency;

(ii) Successor Agency shall have timely performed all obligations set forth in the Schedule of Performance that are required to be performed by Successor Agency prior to the Close of Escrow;

(iii) The Title Company shall be irrevocably committed to issuing the Title Policy to Developer, subject only to the Approved Title Conditions and in a form reasonably acceptable to Developer in accordance with Section 2.04;

(iv) Successor Agency shall have delivered, or caused to be delivered, to Developer and the Title Company all instructions and documents to be delivered by Successor Agency at Close of Escrow pursuant to the terms and provisions hereof;

(v) Successor Agency shall have executed, acknowledged and deposited with the Title Company the Grant Deed in substantially the form of Attachment 10;

(vi) The Commission shall have approved the Plan Amendment, Development Controls Amendment, this Agreement and "**Schematic Design Documents**" (as those documents are defined in the DRDAP);

(vii) The Board of Supervisors shall have held the public hearing and approved the Plan Amendment and the sale of the Site under California Health & Safety Code Section 33433; and

(viii) There shall be no litigation filed or threatened (excluding any litigation initiated by Developers or by an entity under Developers' control, and excluding litigation that challenges the validity or enforcement of Transbay Transit Center Community Facilities District 2014-1) that affects title to the Site, arises out of or relates to the physical condition of the Site, affects or may affect Developer's ability to finance the purchase of the Site, affects or may affect the ability to finance, build or market the Improvements, challenges the actions of Successor Agency or TJPA relating to the Site or this Agreement, or challenges or otherwise relates to the Developers' right to occupy the Site.

(b) Conditions to Successor Agency's Obligation to Close Escrow. The following are conditions to Successor Agency's obligation to close Escrow ("**Successor Agency Conditions**") to the extent not expressly waived by Successor Agency:

(i) Developer shall have deposited the Purchase Price in Escrow pursuant to Section 1.01 and instructed the Title Company to consummate the Escrow;

(ii) If an Event of Default by Affordable Developer then exists, and if Successor Agency has elected to cause a substitute to replace the Affordable Developer, then such replacement process must be in process and proceeding in accordance with Section 8.04;

(iii) Subject to the provisions of this Agreement, Developer shall have fully performed all obligations set forth in the Schedule of Performance that are required to be performed prior to the Outside Date for Close of Escrow;

(iv) Successor Agency shall have received and approved all items referred to in Section 2.08, and financing for the Improvements in the form and amount approved by Successor Agency under Section 2.08 shall close prior to or concurrently with the Close of Escrow;

(v) Developer shall have furnished certificates of insurance or duplicate originals of insurance policies as required by this Agreement;

(vi) There shall not be an Event of Default by Developer;

(vii) Developer shall have delivered to Successor Agency and the Title Company all instructions and documents to be delivered at Close of Escrow pursuant to the terms and provisions hereof;

(viii) Developer shall have deposited with the Title Company (i) a duly executed and acknowledged Declaration of Site Restrictions, substantially in the form of Attachment 11; (ii) Developer's Quitclaim Deed, substantially in the form of Attachment 14; and (iii) the PIA, duly executed by Developer, in a form to be mutually agreed upon by Developer and City;

(ix) Developer shall have deposited with the Title Company a duly executed and acknowledged "Unanimous Approval of Annexation to a Community Facilities District and Related

Matters" form in favor of annexing the Site into the CFD to be dated by the Title Company following recordation of the Grant Deed; and

(x) Developers shall have provided Successor Agency with a final development budget, table of sources and uses, and a 20-year operating budget for the Mid-Rise Affordable Project in accordance with Section 9.05(a).

(c) Conditions Precedent to Lease of Affordable Air Rights Parcel to Affordable Developer. The conditions precedent to Successor Agency's and Affordable Developer's obligation to enter into a lease of the Affordable Air Rights Parcel are as set forth here and in the Air Rights Lease;

(i) The Board of Supervisors shall have held the public hearing and approved the lease of the Affordable Air Rights Parcel under California Health & Safety Code Section 33433.

(d) Notwithstanding anything in this Agreement to the contrary, if the Outside Date for Close of Escrow is extended pursuant to Section 2.03(b)(i) for more than twelve (12) consecutive months, then either Successor Agency or Developer, by written notice to the other, may terminate this Agreement, whereupon the Good Faith Deposit (less those amounts to be withheld as provided in Section 1.02) shall promptly be returned to Developer and the Parties shall have no further liabilities or obligations under this Agreement arising or accruing following such termination.

2.08 Submission of Evidence of Financing and Project Commitments

No later than the dates specified in the Schedule of Performance for submission of the Evidence of Financing and Project Commitments, Developer shall submit to Successor Agency for review and approval (collectively, the "**Evidence of Financing and Project Commitments**"):

(a) A statement setting forth a budget for the total estimated construction cost of the Improvements, allocated between the Tower Market-Rate Condominium Project, the Tower Mixed-Income Rental Project, and the Mid-Rise Affordable Project, with the construction hard costs prepared by, or with the assistance of, a licensed, bondable general contractor (the "**Budget**");

(b) A financing plan listing all sources and uses of funds set forth in the Budget, in a form satisfactory to Successor Agency (the "**Financing Plan**");

(c) An operating budget for the Mid-Rise Affordable Project prepared by the Affordable Developer and agreed to by the Developer, detailing anticipated rent and other project income, and operating expenses including funds for resident services staffing and deposits to reserve accounts, for year one of the Mid-Rise Affordable Project and projected annually for the first twenty years of operation;

(d) A letter from a Bona Fide Institutional Lender, as defined in Article 13, describing a bona fide commitment or commitments for financing the construction costs of the Improvements, including verification of Developer's construction completion guaranty (the "**Financing Commitment**"). The Financing Commitment shall be certified by Developer to be a true and correct copy or copies thereof; additional commitments of funding to cover the difference between the mortgage amount and the Budget, in the form of evidence of funds dedicated to the Developer's compliance with the obligations under this Agreement from the holder of such funds, or in another form reasonably satisfactory to Successor Agency; and, if required by the interim construction financing, commitments for permanent financing shall be provided, also certified by Developer to be true and correct copies thereof. Developer covenants to use diligent, good faith efforts to perform any and all conditions to funding thereof;

(e) Final authorization of funding from all governmental agencies providing financing for the construction of the Improvements, including, allocation letters from the California Tax Credit Allocation Committee and California Debt Limit Allocation Committee, and if applicable, a fully executed loan agreement with Successor Agency governing the Successor Agency Loan and/or an award letter from the California Department of Housing and Community Development;

(f) A construction contract, with a bondable general contractor reasonably satisfactory to Successor Agency, for the construction of the Improvements in accordance with the estimated costs set forth in the Budget (the "**Construction Contract**"). Developer will provide a Construction Contract for Successor Agency's review that may redact confidential, proprietary and trade secret information.

(g) Developer shall submit to the Successor Agency for review and approval by the TJPA a certificate from Developer certifying that funds are or are anticipated to be available to be drawn by Developer and that such funds are or are anticipated to be adequate to pay the costs of planning, design, engineering, procurement, permitting, construction, installation and equipping of the development of Improvements for the intended uses and purposes under this Agreement.

(h) Successor Agency will notify Developer in writing of its approval or disapproval of any of the foregoing documents within twenty-one (21) business days after submission of such documents to Successor Agency, including written reasons for disapproval. Successor Agency shall not unreasonably withhold such approval. Failure of Successor Agency to notify Developer of its approval or disapproval of a document or submission within said periods of time shall entitle Developer to a time extension for the approval of such document or submission until the later of (i) the date of approval by Successor Agency, or (ii) fifteen (15) days after Successor Agency provides written reasons for a disapproval. In no event will Successor Agency's failure to respond be deemed to be an approval.

(i) In the event Successor Agency disapproves of a document or submission required in this Section 2.08, Developer and Successor Agency shall cooperate to review such document or submission. Developer shall be entitled to a reasonable number of re-submissions of such document or submission for approval, to be resubmitted within fifteen (15) days after Successor Agency provides written reasons for a disapproval. If Developer is diligently pursuing the correction or resolution of a deficiency in such document or submission, Developer shall be entitled to a reasonable time extension of such 15-day period, which, collectively shall be no longer than 180 days. All applicable dates set forth in the Schedule of Performance (and, if applicable, the Schedule of Important Project Dates) shall automatically be extended by the same number of days incurred in undertaking such review.

2.09 Conveyance of Title to the Site and Tehama Parcel and Delivery of Possession

Subject to the provisions of Section 2.08, and provided that (i) Developer is not then in default under the terms of this Agreement, (ii) Successor Agency Conditions and the Developer Conditions have been satisfied or expressly waived by the Close of Escrow, and (iii) Developer has paid all sums then due hereunder, then Successor Agency shall convey to Developer, and Developer shall accept the conveyance of, the fee simple interest in the Site and Tehama Parcel, subject to the Approved Title Conditions and the reconveyance to the Successor Agency of the Affordable Air Rights Parcel under Section 2.04(g) and the obligation to construct on the Tehama Parcel the public improvements and offer same for acceptance by City under Section 9.05.

ARTICLE 3 - SITE CONDITION; HAZARDOUS MATERIALS INDEMNIFICATION; "AS IS" PURCHASE

3.01 Prior to Conveyance/Site and Tehama Parcel "As Is"

(a) Successor Agency shall convey the Site and Tehama Parcel in their present, "AS IS" condition, free of any liens, leases, encumbrances, or other matters affecting title except for the Approved Title Conditions, and shall not prepare the Site or Tehama Parcel for any purpose whatsoever prior to conveyance to Developer. So long as there is no material adverse change in the condition of the Site or Tehama Parcel after the Effective Date, Developer agrees to accept the Site and Tehama Parcel in "AS IS" condition at the Close of Escrow in the Approved Title Condition.

(b) Developer acknowledges that neither Successor Agency nor the TJPA has made any representation or warranty, express or implied, with respect to the Site or Tehama Parcel, and it is agreed that Successor Agency and the TJPA make no representations, warranties or covenants, express or implied, as to its physical condition; as to the condition of any improvements; as to the suitability or fitness of the land; as to any Environmental Law, or otherwise affecting the use, value, occupancy or enjoyment of the Site or the Tehama Parcel; or as to any other matter whatsoever; it being expressly understood that the Site and Tehama Parcel are being conveyed in an "AS IS" condition. The provisions of this Section 3.01, as with the other provisions of this Agreement, shall survive the Close of Escrow and shall not merge into the Grant Deed delivered to Developer at Close of Escrow.

(c) Developer has been given the opportunity to investigate the Site and Tehama Parcel fully, using experts of its own choosing, as described in Section 2.06.

(d) After Close of Escrow, Developer, at its sole cost and expense, shall comply with all provisions of Environmental Law applicable to the Site and Tehama Parcel, and Successor Agency, the TJPA, and their respective members, officers, agents and employees shall have no responsibility or liability with respect thereto.

(e) Any costs associated with the security, maintenance/repair, and demolition of any existing structures or other improvements on the Site or Tehama Parcel are the sole and absolute responsibility of Developer.

(f) DEVELOPER ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PROVIDED HEREIN, SUCCESSOR AGENCY IS CONVEYING AND DEVELOPER IS ACCEPTING THE SITE AND TEHAMA PARCEL ON AN "AS IS WITH ALL FAULTS" BASIS SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES, INCLUDING WITHOUT LIMITATION, ANY ZONING ORDINANCES, OR OTHER REGULATIONS GOVERNING THE USE, OCCUPANCY OR POSSESSION OF THE SITE AND TEHAMA PARCEL. DEVELOPER REPRESENTS AND WARRANTS THAT DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SUCCESSOR AGENCY, THE TJPA, OR THEIR AGENTS AS TO ANY MATTERS CONCERNING THE SITE OR TEHAMA PARCEL, ITS SUITABILITY FOR DEVELOPER'S INTENDED USES OR ANY OF THE SITE CONDITIONS. SUCCESSOR AGENCY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE SITE OR TEHAMA PARCEL, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE SITE OR TEHAMA PARCEL OR THEIR USE WITH ANY STATUTE, RESOLUTION OR REGULATION. DEVELOPER AGREES THAT NEITHER SUCCESSOR AGENCY, THE TJPA NOR ANY OF SUCCESSOR AGENCY'S OR TJPA'S AGENTS HAVE MADE, AND SUCCESSOR AGENCY

DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITIONS OF THE SITE OR THE TEHAMA PARCEL.

SUCCESSOR AGENCY: _____ DEVELOPER: _____

3.02 Hazardous Materials Indemnification

(a) Developer shall indemnify, defend and hold Successor Agency, the TJPA and their respective members, officers, agents and employees (individually, "**Hazardous Materials Indemnified Party**" and collectively, "**Hazardous Materials Indemnified Parties**") harmless from and against any losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Hazardous Materials Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (A) Developer's or Affordable Developer's (as applicable) violation of any Environmental Law, or (B) any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Site or Tehama Parcel, occurring after the Close of Escrow, except where such violation, Release or threatened Release, or condition was at any time caused by the gross negligence or intentional misconduct of the Hazardous Materials Indemnified Party seeking indemnification.

(b) The indemnification obligations by Developer with respect to violations of Environmental Law pursuant to clause (A) above shall, for each Developer, only apply to its own violation of Environmental Law, and the obligations with respect to Release or threatened Release of Hazardous Substances pursuant to clause (B) above shall be joint and several prior to Permanent Subdivision of the Site and, thereafter, shall apply with respect to each Developer (and/or its successor after a Transfer of one or more Portion(s)) only as to its ownership parcel(s).

(c) For purposes of this Section 3.02, the term "**Hazardous Substance**" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code §§25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances that occur naturally on the Sited. The term "**Environmental Law**" shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

(d) For purposes of this Section 3.02, the term "**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance).

3.03 Risk of Loss

After Close of Escrow, all risk of loss with respect to any improvements on the Site or the Tehama Parcel shall be borne by Developer; provided that Successor Agency shall assign to Developer at

Close of Escrow any unexpended insurance proceeds and any uncollected claims and rights under insurance policies covering such loss, if any.

3.04 Release

Effective from and after the Close of Escrow, Developer and Affordable Developer hereby waives, releases, acquits, and forever discharge Successor Agency and the TJPA to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has because of or in any way growing out or connected with this Agreement and either the Site or the Tehama Parcel, including, without limitation, the condition of the Site or Tehama Parcel (including any such claim which arose prior to the Close of Escrow, but is discovered thereafter), except (i) matters arising from Successor Agency's or TJPA's fraud or intentional misrepresentation, (ii) any breach of this Agreement by Successor Agency prior to the Close of Escrow, or (iii) any breach of Successor Agency's post-Closing obligations under this Agreement.

DEVELOPER AND AFFORDABLE DEVELOPER BOTH EXPRESSLY WAIVES ITS RIGHTS GRANTED UNDER CALIFORNIA CIVIL CODE § 1542, AND ANY OTHER PROVISION OF LAW, THAT PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE DEVELOPER, AFFORDABLE DEVELOPER OR RELEASING PARTY DOES NOT KNOW OR EXPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN TO IT WOULD HAVE MATERIALLY AFFECTED ITS AGREEMENT TO RELEASE SUCCESSOR AGENCY AND THE TJPA.

BY PLACING ITS INITIALS BELOW, DEVELOPER AND AFFORDABLE DEVELOPER SPECIFICALLY ACKNOWLEDGE AND CONFIRM THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BOTH DEVELOPER AND AFFORDABLE DEVELOPER WERE REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

SUCCESSOR AGENCY:_____ DEVELOPER:_____ AFFORDABLE DEVELOPER:_____

ARTICLE 4 - CONSTRUCTION OF IMPROVEMENTS

4.01 Developer's General Development Obligation.

Developer shall bear all cost and responsibility for compliance with all applicable laws related to the development of the Site and Tehama Parcel in accordance with this Agreement, including without limitation the Subdivision Map Act, the Destroyed Land Records Relief Act, the City Building Code and Fire Code, the Redevelopment Requirements, the Project Approval Documents approved by Successor Agency, or such similar documents as reasonably required by the City, as applicable, and all other federal, state, and local laws, including all laws relating to accessibility for persons with disabilities, applicable to the development of either the Site or Tehama Parcel.

4.02 The Improvements

The Improvements are as defined in Recital U.

4.03 Developer's Construction Obligations

(a) Developer (in consultation with the Affordable Developer) shall direct the development process for the Improvements in the manner described in this paragraph, including but not limited to: forming and hiring the design and construction teams in compliance with applicable laws, rules, regulations and Successor Agency policies; providing the design team with the Development Component Diagram as shown on Attachment 5, and other information and timely decisions to facilitate creation of a design responsive to the requirements of this Agreement, causing the securing of all necessary public approvals and permits; providing clarification to the general contractor and prime contractors regarding construction scope to facilitate construction in conformance with the Project Approval Documents (as defined in Article 13); approving and processing necessary or owner-initiated changes to the work; administering the draw process to pay consultants and contractors in a timely and well-documented manner; coordinating with pertinent public agencies throughout design and construction to secure required approvals, including certificates of occupancy; monitoring the progress of design and construction of the Improvements; and monitoring and facilitating the leasing and property management activities of the Project (defined in Section 4.13(c)).

(b) Developer (in consultation with the Affordable Developer) shall diligently commence and thereafter carry out the construction of the Improvements to Completion of Construction (defined in Section 4.13) within the times and in the manner set forth in this Agreement, including without limitation the Schedule of Performance and Scope of Development and Project Approval Documents. In addition, Developer shall use commercially reasonable efforts to perform those actions listed in the Schedule of Important Project Dates on or before the dates provided in this Agreement (said dates being restated in the Schedule of Important Project Dates for convenience), or, with respect to those actions without dates provided in this Agreement, within the time listed in the Schedule of Important Project Dates. Notwithstanding anything in this Agreement to the contrary, the Parties agree that Developer's inability to perform an action listed in the Schedule of Important Project Dates within the associated period stated (or reprinted in) the Schedule of Important Project Dates shall not be a Developer default under this Agreement, provided that Developer has used commercially reasonable efforts required in the previous sentence and further provided that Developer continues to use commercially reasonable efforts to achieve said action or actions until such time as the Parties may mutually agree.

(c) Developer (in consultation with the Affordable Developer) shall construct, or cause to be constructed, the Improvements in accordance with Section 4.03(a) above and all applicable local, state and federal laws and regulations, including without limitation all laws relating to accessibility for persons with disabilities, the San Francisco Building Code, San Francisco Administrative Bulletin AB-093 (Implementation of Green Building Regulations), the Redevelopment Requirements, Mitigation Measures, and the Project Approval Documents (as that term is defined in the Design Review and Document Approval Procedures ("**DRDAP**," Attachment 15)) or such similar documents as reasonably required by the City, as applicable. Improvements shall be constructed to at least a Leadership in Energy and Environmental Design ("**LEED**") Silver (50 LEED Points) or 75 GreenPoint Rated points standard, as required by the City of San Francisco Green Building Code and the Development Controls.

(d) Sixty (60) days prior to the Construction Commencement Date, Developer shall submit to Successor Agency for its review and approval an active community liaison program for keeping neighborhood residents informed about construction of the Improvements.

(e) Developer shall comply with all City construction noise ordinances and regulations including, but not limited to, the following:

(i) San Francisco Police Code Article 29 "Regulation of Noise"; and

(ii) DBI's "Night Noise Permit Issuance Policy and Procedure".

(f) Developer shall be responsible for securing sufficient funding to construct the Mid-Rise Affordable Project and for constructing all portions of the Improvements necessary to allow for the commencement and completion of construction of the Mid-Rise Affordable Project in accordance with the Schedule of Performance. Other than providing the Successor Agency Loan, neither the Successor Agency nor MOHCD shall be responsible for any costs associated with the Mid-Rise Affordable Project. Developer shall be responsible for completion of the Mid-Rise Affordable Project.

4.04 Compliance with Redevelopment Requirements

The Project Approval Documents shall be in compliance with: (i) this Agreement, including, without limitation, the Scope of Development and (ii) the Redevelopment Plan, the Project Area Declaration of Restrictions, the Development Controls, the Transbay Redevelopment Project Area Design for Development ("D for D"), the Streetscape Plan, and the DRDAP (Attachment 15). The Redevelopment Plan, the Project Area Declaration of Restrictions, the Declaration of Site Restrictions, the Development Controls, the D for D, the Streetscape Plan, the DRDAP, and this Agreement, including the Scope of Development, are sometimes for convenience referred to as "**Redevelopment Requirements**."

4.05 Preparation of Project Approval Documents/Approval of Architect

(a) The Project Approval Documents shall be prepared by or signed by an architect (or architects) licensed to practice architecture in and by the State of California. A California-licensed architect shall coordinate the work of any associated design professions, including engineers and landscape architects. In any event:

(i) A California-licensed architect shall review all construction and certify that all construction has been built based on the design standards in the drawings and specifications as submitted by the architect and as included in the Project Approval Documents; and

(ii) A California-licensed structural and civil engineer shall review and certify all final foundation and grading design to be in substantial conformity with Project Approval Documents.

(b) The architect(s) for the Improvements shall certify that the Improvements have been designed in accordance with all local, state and federal laws and regulations relating to accessibility for persons with disabilities.

4.06 Submission of Project Approval Documents

Developer (in consultation with the Affordable Developer), shall prepare and submit Project Approval Documents to Successor Agency for review and approval in accordance with the Scope of Development, the DRDAP and the Schedule of Important Project Dates or Schedule of Performance (as applicable).

4.07 Scope of Successor Agency Review/Approval of Developer's Construction

(a) Successor Agency's review and approval of Project Approval Documents is limited to (i) a determination of their compliance with (A) the Redevelopment Requirements, and (B) the mitigation measures referred to in Section 9.02; (ii) urban design issues, including implementation of the Successor Agency's urban design objectives; and (iii) architectural design (excluding the interiors of market rate units) including, but not limited to, landscape design, including materials, plantings selection and

irrigation, site planning, the adequacy of utilities for servicing the Site, exterior and public area signs and public art work, if any. Successor Agency shall act reasonably and in good faith in its review and approval process.

(b) No Successor Agency review is made or approval given as to the compliance of the Project Approval Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable local, state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the Improvements for use by persons with disabilities.

4.08 Construction Commencement

(a) Developer agrees, and the Grant Deed shall contain covenants, to commence construction of the Improvements (the date of commencement, the "**Construction Commencement Date**") on or before the Construction Commencement Outside Date specified in the Schedule of Performance and carry the development of the Improvements diligently to completion within the times specified in the Schedule of Performance. Developer shall evidence its compliance with this obligation by specifying to its general contractor a date for the general contractor to fully commence of work on the Improvements, established in a notice to proceed issued to the general contractor by Developer and/or its architect (which notice shall be simultaneously provided to OCII) and which notice shall not be modified prior to the Construction Commencement Date.

(b) For the purposes of this Agreement, the "**Commencement of Substantial Construction**" means the later to occur of the following: (i) date of issuance by the City's Department of Building Inspection ("**DBI**") of the foundation addendum to the site permit for the Project; and (ii) the date upon which Developer closes on construction financing for both the Tower Project and Mid-Rise Affordable Project as evidenced by executed and recorded deeds of trust or other documentation as Successor Agency may reasonably request.

(c) The Schedule of Performance is intended, and Developer hereby covenants, to facilitate the completion of the construction of the Improvements in a single phase.

4.09 Cost of Developer Construction

The cost of developing the Site and Tehama Parcel and construction of all Improvements thereon shall be borne solely by Developer, except as otherwise provided in this Agreement.

4.10 Issuance of Building Permit

(a) It is the intent of Developer to use the site permit process, as described in the DRDAP. Developer shall have the sole responsibility for obtaining all necessary site permits, associated addenda, and any other required building permits and shall make application for such permits directly to DBI. When applicable, Successor Agency shall reasonably and expeditiously cooperate with Developer in its efforts to obtain such permits, at no cost or expense to Successor Agency. Prior to commencing construction of any portion of the Improvements, Developer shall have each obtained the requisite site permit and associated addenda. From and after the date of its submission of any such application, Developer shall diligently prosecute such application.

(b) Developer and Affordable Developer are advised that DBI forwards all site and building permits to Successor Agency, when applicable, for Successor Agency approval of compliance with

Redevelopment Requirements. Successor Agency review of the site permit, associated addenda, or building permit does not include any review of compliance thereof with the requirements and standards referred to in Section 4.07(b) above, and Successor Agency shall have no obligations or responsibilities for such compliance. Successor Agency evidences its approval by signing such permit and returning the permit to DBI for issuance directly to Developer or Affordable Developer, as applicable. Approval of a site permit, associated addenda, or any other building permit, however, is not approval of compliance with all Redevelopment Requirements necessary for such a permit.

4.11 Delay of Construction Tax Increment Fee

(a) If the Completion of Construction (as defined in Section 4.13 below) does not occur by the date specified in the Schedule of Performance, then Developer shall pay to the TJPA a "**Delay of Construction Tax Increment Fee**" that is intended to fully recompense the increment of ad valorem property taxes lost due to Developer's failure to achieve Completion of Construction as so required.

(b) The Delay of Construction Tax Increment Fee shall be the amount of ad valorem property tax that would be due had the Developer timely completed the Project ("**Estimated Tax**"), less the amount of property tax actually due. To establish the amount of the Delay of Construction Tax Increment Fee, the Parties shall commence an appraisal and estimation process to establish both fair market value of the Site and Improvements, the ad valorem tax rate applicable to the Site and Improvements on the date specified in the Schedule of Performance for Completion of Construction, and the resulting amount of additional tax that would have been due had the Developer timely completed the Project, pro-rated to account for any partial tax year (the "**Estimation Process**"). The Estimation Process shall be as follows:

(i) Each Party shall, at its own expense, designate a licensed MAI Appraiser or other certified real estate professional with at least ten (10) years' experience in the sale and purchase of comparable commercial properties in the San Francisco market. If either party fails to designate its expert within twenty-one (21) days after Successor Agency delivers written notice pursuant to Section 4.11(d) below, then the expert selected by the other Party shall act alone and his/her determination shall be binding.

(ii) The two (2) experts selected by the Parties (the "**Party Experts**") shall each select a similarly qualified, independent appraiser or other expert whose expenses shall be shared equally by Developer and Successor Agency (the "**Neutral Expert**"). If the Neutral Expert cannot be agreed to by the Parties, then the American Arbitration Association, or any successor organization, shall select the Neutral Expert in accordance with its rules and procedures and subject to California law regarding the selection of arbitrators. The Parties shall jointly share the fees charged by the American Arbitration Association.

(iii) Each of the Party Experts shall within thirty (30) days after appointment and after soliciting, accepting and reviewing such information and documentation as each may deem necessary and appropriate, including that reasonably submitted by either Party, prepare a statement of what it considers to be the Estimated Tax based on its determination of the fair market value of the Site and Improvements if Developer achieved Completion of Construction by the date specified in the Schedule of Performance. Their determinations shall be prepared for property tax purposes according to California property tax law and the Property Tax Rules published by the California State Board of Equalization.

(iv) Once the two (2) Party Experts reach their conclusions, then the Neutral Expert shall select the determination of the Estimated Tax that he or she determinates to be most accurate, and the amount so calculated shall be used to calculate the amount of the Delay of Construction Tax immediately due and payable by Developer under this Section 4.11.

(c) Any costs incurred by Successor Agency pursuant to this Section 4.11 shall be reimbursed by the Developer pursuant to Section 12.01.

(d) Successor Agency may initiate, at any time after Developer has failed to meet the requirement in the Schedule of Performance for the Completion of Construction, the Estimation Process upon 21 days of notice to Developer; provided, however, that Successor Agency shall not initiate the Estimation Process more than once in a twelve-month period.

(e) Within 30 days after determination of the amount of the Delay of Construction Tax Increment Fee, Developer shall pay the fee directly to the TJPA. The TJPA shall remit to the Successor Agency 20% of the Delay of Construction Tax Increment Fee for Successor Agency's use in fulfilling its obligations under the Implementation Agreement and the Transbay Affordable Housing Obligation and shall retain the remainder for TJPA's use in fulfilling its obligations under the Pledge Agreement. Developer shall not receive a credit of any kind with the Assessor-Recorder for any payments made pursuant to this Section 4.11.

4.12 Construction Signs and Barriers

Developer, working with the Affordable Developer, shall provide appropriate construction barriers and construction signs and post the signs on the Site during the period of construction. The size, design and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Successor Agency for approval before installation, which approval shall not be unreasonably withheld and shall otherwise comply with applicable laws.

4.13 Certificate of Completion

(a) Developer may request in writing that Successor Agency issue a Certificate of Completion, in the form of Attachment 16 hereto (the "**Certificate of Completion**"), recognizing that Developer has met the development obligations of this Agreement. In submitting such requests to Successor Agency for a Certificate of Completion, Developer shall provide: (i) DBI's Certificate of Final Completion and Occupancy ("**CFCO**") for the Improvements and (ii) a certification from Developer that it has satisfied in all material respects all obligations that are required to be satisfied under this Agreement for issuance by Successor Agency of the Certificate of Completion. Developer's certification shall include the following supporting documentation: (1) certification from Developer's architect that the Improvements have been constructed in accordance with the Project Approval Documents and in compliance with all applicable local, state and federal laws and regulations (including all laws relating to accessibility for persons with disabilities); (2) written determinations by the City of completion of streetscape or other public infrastructure improvements required under this Agreement, including a Determination of Completeness ("**DOC**") for improvements permitted by DPW and the City's acceptance, through action by the Board of Supervisors, of public improvements, including the public street constructed on the Tehama Parcel; and (3) any information necessary to determine compliance with Successor Agency Equal Opportunity Program, as described in Article 10 and Attachment 17, including Small Business Enterprise utilization reports, final certified payroll reports from Developer's construction contractors and subcontractors, construction workforce requirements, and the executed First Source Hiring Agreement between Developer and the Office of Economic and Workforce Development – CityBuild. Notwithstanding anything to the contrary contained herein, Successor Agency may, in its sole discretion, issue a Certificate of Completion for the Mid-Rise Affordable Project in accordance with the Air Rights Lease, notwithstanding the fact that the Tower Project may not be completed at that time.

(b) Upon receipt of such request, Successor Agency shall review the request and notify Developer within fifteen (15) days of receipt of the request of Successor Agency's determination of whether

or not it will issue the Certificate of Completion for the Improvements covered by the request. Any notice from Successor Agency stating that it will not issue the Certificate of Completion shall specify the reasons therefor following which Developer may seek to satisfy any unfulfilled obligations and again submit a request for the Certificate of Completion. Successor Agency's determination shall be based on Developer's compliance with the requirements of this Agreement that must be complied with to the date of the issuance of the Final CFCO for the Improvements.

(c) Upon Successor Agency's determination that Developer is in compliance with this Agreement, including, without limitation, Sections 5.05 and 9.04 below and upon Successor Agency's receipt of the documentation required of Developer in Section 4.13(a), Successor Agency shall promptly issue to Developer, in recordable form, a duly executed Certificate of Completion in the form of Attachment 16. So issued, the Certificate of Completion shall be a conclusive determination that (i) the Improvements have been constructed in accordance with this Agreement; and (ii) the full performance of the agreements and covenants contained in this Agreement and in the Grant Deed with respect to the obligations of Developer, and its successors and assigns, except for those provisions covered by Section 4.13(d), below, and those provisions that survive termination of this Agreement as provided in Section 5.12. "**Completion of Construction**" shall mean the date on which Successor Agency issues the Certificate of Completion, and after that date, the Improvements so constructed and certified pursuant to an executed Certificate of Completion are referred to as the "**Project**".

(d) Successor Agency's issuance and recordation of any Certificate of Completion does not relieve Developer or any other person or entity from any City requirements or conditions to occupancy of such Improvements, which requirements or conditions shall be complied with separately.

4.14 Right to Reconstruct the Improvements in the Event of Casualty

In the event that the Improvements are destroyed by casualty prior to the issuance of the Certificate of Completion, the Developer or Affordable Developer, as applicable, shall have the right to rebuild the applicable Improvements substantially in conformity with this Agreement and the approved Project Approval Documents, subject to changes necessary to comply with the applicable building code, and the Redevelopment Requirements or other local requirements then in effect for the Site.

4.15 Access to Site – Successor Agency

Successor Agency, the TJPA, the City, and their respective representatives will have the right to enter upon the Site and/or the Tehama Parcel during normal business hours with 48 hours' prior notice to Developer, at no cost or expense to Successor Agency, the TJPA or the City, during the period of construction of the Improvements to the extent necessary to carry out the purposes of this Agreement, including inspecting the work of construction of the Improvements. Developer will have the right to have an employee, agent or other representative of Developer accompany Successor Agency, the TJPA, the City, and their representatives at all times while they are present on the Site and/or the Tehama Parcel. Successor Agency, the TJPA, the City, and their respective representatives will exercise due care in entering upon and/or inspecting the Site and/or the Tehama Parcel and will perform all entry and inspection in a professional manner and so as to preclude any damage to the Site or Improvements, or any disruption to the work of construction of the Improvements. Successor Agency, the TJPA, the City and their respective representatives will abide by any reasonable safety and security measures Developer or its general contractor imposes.

4.16 Off-Site Infrastructure and Improvements Damage

In addition to the indemnification provisions contained in Section 11.01 of this Agreement, Developer further agrees to repair fully and/or replace to the reasonable satisfaction of Successor Agency, any damage to the off-site infrastructure and improvements within the Project Area existing as of the date of the Construction Commencement Date, including without limitation streets, sidewalks, curbs, gutters, drainage ditches, fences and utility lines lying within or adjacent to the Site, directly or indirectly resulting from work performed by or for Developer. Developer or its respective general contractor, before commencement of any work outside of the Site or Tehama Parcel, shall secure this obligation with a $1,000,000 bond or insurance in form reasonably acceptable to Successor Agency, or other security reasonably acceptable to Successor Agency, such as a personal guaranty. Developer's liability under this provision shall not be limited to the amount of the bond or insurance.

4.17 Insurance Requirements

Without in any way limiting Developer's or Affordable Developer's indemnification obligations under this Agreement, and subject to approval by Successor Agency of the insurers and policy forms, each of the Developer and Affordable Developer shall obtain and maintain, or shall contractually require others to maintain, throughout the Term, the minimum insurance coverage as set forth in Attachment 18.

ARTICLE 5 - COVENANTS AND RESTRICTIONS

5.01 Covenants

Developer expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Site and Tehama Parcel and any Improvements constructed or to be constructed, the Project, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, Developer and all such successors and assigns and all persons claiming under or through it, shall use, devote, operate and maintain the Site, Tehama Parcel and the Improvements, the Project, and every part thereof, only and in accordance with the provisions of this Agreement, including but not limited to Article 5 (subject to the provisions of Section 5.11 of this Agreement). The provisions hereof are contained in the Grant Deed, and/or Declaration of Site Restrictions. This provision shall only apply after the Close of Escrow and in the event Successor Agency exercises the Successor Agency Power of Termination and regains title to the Site, this provision shall be of no further force or effect.

5.02 General Restrictions

The Project shall be devoted only to the uses permitted by (i) the Redevelopment Plan and its Plan Documents (as defined in the Redevelopment Plan), (ii) the Project Area Declaration of Restrictions, (iii) this Agreement, (iv) the Declaration of Site Restrictions, (v) the Commercial Space Declaration (Attachment 28), and (vi) Affordability Requirements to be documented in the Air Rights Lease and a Declaration of Affordability Restrictions for each of the Mid-Rise Affordable Project (Attachment 19B) and the Tower Mixed-Income Rental Project (Attachment 19A) setting forth the affordability restrictions as described in Section 9.04(b) of this Agreement for the life of the Project. In the event Successor Agency exercises the Successor Agency Power of Termination and regains title to the Site, subsections (iii) and (iv) of this Section 5.02 shall be of no further force or effect.

5.03 Restrictions Before Completion

Prior to the Completion of Construction, the Site and the Tehama Parcel shall be used only for construction of the Improvements in accordance with this Agreement, including, but not limited to the Scope of Development. This provision shall only apply after the Close of Escrow and in the event Successor Agency exercises the Successor Agency Power of Termination and regains title to the Site pursuant to Section 8.03(a), this provision shall be of no further force or effect.

5.04 Nondiscrimination

(a) There shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, and Developer itself (or any person or entity claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Site or any part thereof, nor shall Developers or any occupant or user of the Site or any transferee, successor, assign or holder of any interest in the Site or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including, without limitation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Site or Improvements.

(b) Developer, for itself and or any person or entity claiming under or through it, further agrees and covenants that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926,12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site nor shall Developer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

(c) Notwithstanding the above, Developer shall not be in default of its obligations under this Section 5.04 where there is a judicial action or arbitration involving a bona fide dispute over whether Developer is engaged in discriminatory practices and Developer promptly acts to satisfy any judgment or award against Developer.

(d) The covenants of this Section 5.04 shall run with the land, and any transferee, successor, assign, or holder of any interest in the Site, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against discrimination, shall be bound hereby and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above; provided, however, in the event Successor Agency exercises the Successor Agency Power of Termination and regains title to the Site, this provision shall be of no further force or effect; provided, further, that nothing herein shall invalidate any applicable non-discrimination law.

(e) Elimination of Discriminatory Restrictions. Developers agree to take and to permit Successor Agency to take all steps legally necessary or appropriate to remove restrictions against the Site and Tehama Parcel, if any, that would violate any of the non-discrimination provisions of this Section, whether the restrictions are enforceable or not.

5.05 Restrictions on Affordable Housing Units

(a) The Affordable Housing Units shall remain subject to the affordability requirements specified in the Declaration of Affordability Restrictions for the life of the Project. For the purposes of this Agreement, "life of the Project" shall mean the time during which the Project, including any future modification thereto, remains in existence.

(b) For the life of the Project, neither Developer, Affordable Developer, nor any successor or assign may make or permit any material alteration, modification, addition and/or substitution of or to the location of the Affordable Housing Units without the express prior written consent of Successor Agency or its designee granted or withheld in its reasonable discretion and upon any terms and conditions Successor Agency or its designee reasonably requires.

(c) Developer shall also comply with the requirements in Section 9.04 related to the Affordable Housing Units for so long as Developer must comply with Sections 5.05(a) and (b).

5.06 No Mortgages

Until Developer has achieved the Commencement of Substantial Construction, there shall be no mortgage, encumbrance or liens on any portion of the Site and/or the Tehama Parcel, except for mortgages and deeds of trust related to the purchase of or construction on the Site and/or the Tehama Parcel or otherwise approved by Successor Agency in its reasonable discretion; provided, however, in the event Successor Agency exercises the Successor Agency Power of Termination and regains title to the Site, this provision shall be of no further force or effect.

5.07 No Changes Without Approval

For the period during which the Redevelopment Plan and Project Area Declaration of Restrictions are in effect, neither Developer nor any successor or assign may make or permit any change in the uses permitted on the Site or any Change in the Improvements (as defined below) without the express prior written consent of the Successor Agency to any proposed change in uses or any Change in the Improvements (defined below), which consent may be made subject to terms and/or conditions reasonably required by the Successor Agency; provided, however, in the event Successor Agency exercises the Successor Agency Power of Termination and regains title to the Site, this provision shall be of no further force or effect. "**Change in the Improvements**" is defined as any alteration, modification, addition and/or substitution of or to the Site or the Improvements that materially affects: (a) the density of development; (b) the extent and nature of the open space on the Site; (c) any public access to or through the Site and the Improvements; (d) the exterior design; (e) the exterior materials; and (f) the exterior color. For the purposes of this Section, "**exterior**" also includes the roof of the Improvements.

5.08 Transfer Payment Covenant

The Transfer Payment Covenant and Notice (Attachment 20) shall run with the land, and any transferee, successor, assign, or holder of any interest in a Residential Condominium Unit, shall be bound thereby and shall not violate in whole or in part, directly or indirectly, the requirements set forth therein.

5.09 Determination of Assessed Value

(a) Developer shall not (until the TJPA Bonds Final Maturity Date, as defined below) object to the assessed value of Block 4 by the Assessor-Recorder, but shall have the right to contest the

assessed valuation by the Assessor-Recorder in the event of a market downturn, where such contest is made solely on the basis of such market downturn; provided, however, that Successor Agency shall not object to or otherwise interfere with Developers' application for the welfare exemption as to the Mid-Rise Affordable Project and the BMR units in accordance with the California Revenue and Taxation Code Section 214(g) and the California State Board of Equalization Property Tax Rules.

(b) Developer shall (until the TJPA Bonds Final Maturity Date, as defined below) (i) provide information in its possession or reasonably accessible to Developer that the Assessor-Recorder, Successor Agency, or TJPA reasonably requests relating to the assessment of the value of new construction in progress, completed new construction, revenues from the sale and/or leasing of any portion of new development, applications for welfare tax exemption, and other relevant information pertinent to the assessment of Block 4 (or any portion thereof) or Developer's compliance with its obligations under this Section 5.09; and (ii) give the Successor Agency and the TJPA written notice of any planned changes in development ownership or management, contact information, or modifications to the original legal parcel boundaries (including parcel subdivision, air rights or condominium formation) at least 60 days in advance of any proposed change.

(c) The "**TJPA Bonds Final Maturity Date**" shall mean October 1, 2049, as such date shall be automatically extended in the event of subsequent financing that results in redemption of the TJPA Bonds, in part or in full, where such subsequent financing does not increase any obligation, requirement, or liability of Developer hereunder.

5.10 Casualty

Developer shall (until the TJPA Bonds Final Maturity Date) apply fire and casualty property insurance proceeds to the restoration of the development of the Site and the Improvements thereon if, in the reasonable judgment of the Successor Agency, the funds available to Developer in the event of all or partial destruction of the development are sufficient to restore the development to substantially its prior use and condition.

5.11 Effect, Duration and Enforcement of Covenants

(a) It is intended and agreed, and the Grant Deed and/or Declaration of Site Restrictions shall expressly provide, that the covenants provided in this Article 5 shall be covenants running with the land as and to the extent set forth in the Grant Deed and/or the Declarations of Site Restrictions and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement itself, to the fullest extent permitted by law and equity,

(i) binding for the benefit and in favor of Successor Agency, as beneficiary, as to all covenants set forth in this Article 5; the City and the owner of any other land or of any interest in any land in the Project Area (as long as such land remains subject to the land use requirements and restrictions of the Redevelopment Plan and the Project Area Declaration of Restrictions), as beneficiary, as to the covenants provided in Sections 5.02 and 5.04; and their respective successors and assigns, and

(ii) binding against Developer, its successors and assigns to or of the Site and any Improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Site or the Improvements thereon or any part thereof. It is further intended and agreed that the covenants provided in this Article 5 shall remain in effect respectively as set forth herein, and the covenants in Section 5.02 shall remain in effect for the respective duration of the Redevelopment Plan and the Project Area Declaration of Restrictions; provided, however, that such agreements and covenants shall

be binding on Developer, its successors in interest or assigns, and each party in possession or occupancy, respectively, only for such period as that party shall have title to or an interest in or possession or occupancy of the Site or part thereof. In the event Successor Agency exercises the Successor Agency Power of Termination and regains title to the Site, such agreements and covenants shall be of no further force or effect, except to the extent that they are restatements of applicable law, including the Redevelopment Plan and Related Plan Documents (as defined in the Redevelopment Plan).

(b) In amplification, and not in restriction, of the provisions of the preceding Sections, it is intended and agreed that Successor Agency, the TJPA and the City and their respective successors and assigns, as to the covenants provided in this Article 5 of which they are stated to be beneficiaries, shall be beneficiaries both for and in their own right and also for the purposes of protecting the interest of the community and other parties, public or private, and without regard to whether Successor Agency or the City has at any time been, remains, or is an owner of any land or interest therein to which, or in favor of which, such covenants relate. Successor Agency, the TJPA and the City and their respective successors and assigns shall have the right, in the event of any of such covenants of which they are stated to be beneficiaries, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach of such covenants to which it or any other beneficiaries of such covenants may be entitled including, without limitation, restraining orders, injunctions and/or specific enforcement, judicial or administrative. These rights and remedies are in addition to, and not in derogation of, the rights and remedies of Successor Agency set forth in this Agreement.

(c) The conveyance of the Site by Successor Agency to Developer is made and accepted upon the express covenants contained in this Article 5 as set forth herein, which, except only as otherwise specifically provided in this Agreement itself, shall survive the Certificate of Completion and shall be provided for in the Grant Deed and/or the Declaration of Site Restrictions and the Transfer Payment Covenant; provided that in the event Successor Agency exercises the Successor Agency Power of Termination and regains title to the Site pursuant to Section 8.03(a), all such agreements and covenants contained in this Article 5 shall be of no further force or effect, except to the extent that they are restatements of applicable law, including the Redevelopment Plan and Plan Documents (as defined in the Redevelopment Plan).

(d) The conveyance of the Tehama Parcel by Successor Agency to Developer is made and accepted upon the covenants contained in Section 2.02. Developer acknowledges that Section 2.02 constitutes a material inducement to the Successor Agency to enter into this Agreement, and failure to complete the applicable Improvements on the Tehama Parcel as required in this Agreement or failure to offer the Tehama Parcel to the City as provided in this Agreement shall be a material breach of this Agreement.

(e) Developer shall be entitled to notice and shall have the right to cure any breach or violation of all or any of the foregoing in accordance with Article 8.

5.12 Provisions Surviving Termination

The following provisions (together with any definitions or other general provisions necessary to implement the following provisions) shall survive Successor Agency's issuance and recordation of the Certificate of Completion, and shall also be incorporated into the Declaration of Site Restrictions (Attachment 11), and/or the Grant Deed, as applicable (Attachment 10):

(a) All requirements contained in Sections 3.01(a), (b) and (d) of this Agreement;

(b) All requirements contained in Sections 3.02, 3.03 and 3.04 of this Agreement until the expiration of such requirements as set forth therein;

(c) All requirements pertaining to Professional Liability and Builder's Risk in Attachment 18 of this Agreement until the expiration of such requirements as set forth therein;

(d) All requirements contained in Section 5.02 of this Agreement until the expiration of the Redevelopment Plan and the Declaration of Site Restrictions;

(e) All requirements contained in Section 5.04 of this Agreement;

(f) All requirements contained in Section 5.05 of this Agreement until the expiration of such requirements as set forth therein;

(g) All requirements contained in Section 5.07 of this Agreement until the expiration of the Redevelopment Plan and the Declaration of Site Restrictions;

(h) All requirements contained in Section 5.08 of this Agreement;

(i) All requirements contained in Section 5.09 of this Agreement, until the TJPA Bonds Final Maturity Date;

(j) All such requirements contained in Section 5.10 of this Agreement, until the TJPA Bonds Final Maturity Date;

(k) All requirements contained in Section 9.04 of this Agreement until the expiration of those requirements set forth in Section 5.05 of this Agreement;

(l) All requirements contained in Section 9.06(b) of this Agreement;

(m) All requirements contained in Section 9.07, but only for the life of the Project;

(n) All requirements contained in Section 9.08 of this Agreement, but only for the life of the Project;

(o) All requirements contained in Section 9.09 of this Agreement, but only for the life of the Project;

(p) All requirements and provisions contained in Section 9.10 of this Agreement for the life of each Condominium Unit; and

(q) All requirements contained in Sections 11.01 and 11.02 of this Agreement until the expiration of such requirements as set forth therein.

ARTICLE 6 - ANTI-SPECULATION, ASSIGNMENT, AND TRANSFER PROVISIONS

6.01 Representation as to Developer

Developer represents and agrees that its purchase of the Site and its other undertakings pursuant to this Agreement shall be used for the purpose of redevelopment of the Site and not for speculation in land holding.

6.02 Prohibition Against Transfer of the Site, the Improvements and the Agreement

(a) Subject to the terms of Article 7, which permits Mortgages to encumber the Project and the transfers described in Section 2.04(g), before the issuance by Successor Agency of the Certificate of Completion, neither Developer nor Affordable Developer shall make or create or suffer to be made or created any total or partial sale, conveyance, mortgage, encumbrance, lien, assignment, option to acquire, any trust or power, or transfer in any other mode or form, of this Agreement, the Site or the Improvements thereon, or any part thereof, or interest therein, or permit any significant change in the ownership of the Developer or Affordable Developer to occur or contract or agree to do any of the same (collectively a "**Transfer**") without the prior written approval of Successor Agency (the "**Successor Agency Approval**"), which shall not be unreasonably withheld. For avoidance of doubt, (i) this Section 6.02 shall not act to prevent Developer from retaining one or more Developer Affiliates (as defined below) to perform certain construction, development and other project management services with respect to the Improvements or the Project, which may include performance of certain of Developer's obligations under this Agreement on Developer's behalf, and (ii) the prohibitions on transfer in this Section 6.02 shall be of no further force or effect after the issuance of the Certificate of Completion, and (iii) the prohibitions on transfer in this Section 6.02 shall not prohibit the sale of individual Residential Condominium Units within the Tower Market-Rate Condominium Project. For purposes hereof, a "**Developer Affiliate**" shall mean any entity controlling, controlled by, or under common control with Developer (and 'control' and its correlative terms 'controlling', 'controlled by' or 'under common control with' mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise);

(b) Notwithstanding the general prohibition in Section 6.02(a) above, and subject to the requirements of Section 6.03:

(i) Should Developer or any equity investor(s) in or lender(s) to Developer or its owner(s) remove or cause the removal of the Hines Urban F4, LLC from Developer, said party shall, immediately concurrent with such removal, propose a replacement entity that (a) has experience developing and completing projects of similar size and scope to the Improvements (including its affordable housing component) in California; (b) possesses a good business character and reputation; and which, upon the Successor Agency's reasonable concurrence that such entity meets the foregoing qualifications, shall assume the rights and obligations of the Hines/Urban entity (including, without limitation, the control or management of the day-to-day operation of development activities with respect to the Improvements) ("**Qualified Replacement Development Manager**");

(ii) Developer may, without Successor Agency approval:

(A) effectuate any Transfer of all of the rights and obligations of Developer hereunder to another entity so long as the Hines Urban F4, LLC (or a Qualified Replacement Development Manager previously approved pursuant to this Section 6.02(b)) controls or manages the day-to-day operation of such transferee entity's development activities with respect to the Improvements;

(B) effectuate any Transfer of any direct or indirect interest in Developer, provided the Hines Urban F4, LLC (or a Qualified Replacement Development Manager previously approved under this Section 6.02(b)) controls or manages the day-to-day operation of Developer's development activities with respect to the Improvements.

(iii) Developer or Affordable Developer (or its successor) may effectuate a Transfer that is permitted under the Air Rights Lease;

(iv) Developer may effectuate the encumbrance of the Site and Improvements with recorded documents, including, without limitation, easements, stormwater maintenance agreements, reciprocal easement agreements and parcel or subdivision maps, except where Successor Agency review and approval of such is included in this Agreement, if in connection with the construction of the Improvements and/or permanent financing for the Project;

(v) Developer may effectuate the encumbrance of the Site and Improvements with one or more regulatory agreements, restrictive covenants, or land use restriction agreements in connection with the bond financing, tax credits, and affordability restrictions.

6.03 Assumption by Transferee

Notwithstanding anything to the contrary contained in Section 6.02 or elsewhere in this Agreement, no Transfer of the rights and obligations of Developer hereunder that is either allowed by Section 6.02 without Successor Agency approval or that is made with Successor Agency approval shall be valid until such transferee shall assume in writing the obligations of the Developer from and after the date of such Transfer and agree to be bound by the terms and provisions hereof in a form approved by Successor Agency in its reasonable discretion. The transferee shall thereafter be solely responsible for the obligations and liabilities of Developer under this Agreement or any document entered into in connection with this Agreement, and Successor Agency shall release and forever discharge such assignor from any obligations and liabilities with respect to any other portions of the Improvements, the Project or Site under this Agreement or any document entered into in connection with this Agreement, subject to the Successor Agency's review and approval, in its reasonable discretion, of the assignment document with respect to such obligations and liabilities.

Provided further, that Developer agrees that any leases for any portion of the Improvements entered into prior to Commencement of Substantial Construction will include a provision that allows for the termination of the lease by the Successor Agency subsequent to its exercise, prior to the Commencement of Substantial Construction, of the Successor Agency Power of Termination and subject to any notice requirements (not to exceed 30 days) under the lease.

6.04 Effect of Violation

In the absence of specific written approval by Successor Agency, and except to the extent set forth in this Agreement, no Transfer shall be deemed to relieve Developer or any other party from any obligations under this Agreement prior to the Transfer, or deprive Successor Agency of any of its rights and remedies under this Agreement or the Grant Deed.

ARTICLE 7 - MORTGAGE FINANCING: RIGHTS OF MORTGAGEES

7.01 Mortgagee

For purposes of this Agreement, the "**Mortgagee**" shall singly and collectively include the following: (a) a mortgagee or beneficiary under a mortgage or a deed of trust concerning all or any portion of the Site (a "**Mortgage**"), and (b) any insurer or guarantor of any obligation or condition secured by a Mortgage concerning all or any portion of the Site. Subject to the terms and conditions set forth in this Article 7, Developer shall be entitled to grant one or more Mortgages on all or any portion of the Site.

7.02 Required Provisions of Any Mortgage

Developer agrees to have any Mortgage provide that such Mortgage is subject to all of the terms and provisions of this Agreement. Any Mortgage shall provide that the Mortgagee of such Mortgage shall give notice to Successor Agency in writing by registered or certified mail of the occurrence of any default by Developer, as applicable, under the Mortgage, and that Successor Agency shall be given notice at the time any Mortgagee initiates any Mortgage foreclosure action. In the event of any such default, Successor Agency shall have the right to cure such default, provided that Developer, as applicable, is given not less than fifteen (15) days' prior notice of Successor Agency's intention to cure such default. If Successor Agency shall elect to cure such default, Developer shall pay the cost thereof to Successor Agency upon demand, together with the interest thereon at the maximum interest rate permitted by law, unless (i) Developer cures such default within such 15-day period, or (ii) if curing the default requires more than fifteen (15) days and Developer shall have commenced cure within such fifteen (15) days after such notice, Developer shall have (A) cured such default within forty-five (45) days or such greater time period as may be allowed by Mortgagee after commencing compliance, or (B) obtained from the Mortgagee a written extension of time in which to cure such default.

7.03 Address and Acknowledgment of Mortgagee

No Mortgagee shall be entitled to exercise the rights set forth in this Article 7 unless and until written notice of the name and address of the Mortgagee shall have been given to Successor Agency, notwithstanding any other form of notice, actual or constructive. Successor Agency shall, upon written request, promptly acknowledge receipt of the name and address of the Mortgagee and confirm to such party that such party is or would be, upon closing of its financing or its acquisition of an existing Mortgage, a Mortgagee entitled to all rights under this Article 7 and a Bona Fide Institutional Lender, provided that Successor Agency receives reasonable proof of the foregoing. Such acknowledgment shall, if requested, be in recordable form and may be recorded at Developer's expense. After reviewing the proof of the status of any prospective mortgagee, if Successor Agency reasonably determines that any such acknowledgment requested by Developer or such prospective mortgagee or assignee would be inaccurate, then Successor Agency shall promptly notify Developer and the prospective Mortgagee or assignee of such determination. Such notice shall specify the reasonable basis for Successor Agency's determination. If Successor Agency has received notice of any Mortgagee, then such notice shall automatically bind Successor Agency's successors and assigns.

7.04 Mortgagee's Right to Cure

If Developer creates a Mortgage on the Site in compliance with the provisions of this Article 7, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Successor Agency, upon serving Developer or Affordable Developer, as applicable, any notice of default or any other notice under the provisions of or with respect to this Agreement, shall also serve a copy of such notice upon any Mortgagee at the address provided to Successor Agency pursuant to this Agreement, and no notice hereunder by Successor Agency to either of the Developers shall affect any rights of a Mortgagee unless and until a copy thereof has been so served on such Mortgagee provided that Mortgagee has complied with Section 7.03 above.

(b) Any Mortgagee shall have the right to remedy, or cause to be remedied, any Default of Developer or Affordable Developer, within the later to occur of (i) one hundred twenty (120) days following the date of Mortgagee's receipt of the notice referred to in Section 7.04(a) above, or (ii) one hundred twenty (120) days after the expiration of the period provided herein for Developer or Affordable

Developer to remedy or cure such default, and Successor Agency shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer or Affordable Developer.

(c) Any notice or other communication which Successor Agency shall desire or is required to give to or serve upon the Mortgagee shall be in writing and shall be served in the manner set forth in Section 12.03, addressed to the Mortgagee at the address provided for in this Agreement.

(d) Any notice or other communication which Mortgagee shall give to or serve upon Successor Agency shall be deemed to have been duly given or served if sent in the manner and at Successor Agency's address as set forth in Section 12.03, or at such other address as shall be designated by Successor Agency by notice in writing given to the Mortgagee in like manner.

7.05 Application of Agreement to Mortgagee's Remedies

Except as provided in Section 7.02, no provision of this Agreement shall limit the right of any Mortgagee to foreclose or otherwise enforce any mortgage, deed of trust or other encumbrance upon the Site, nor the right of any Mortgagee to pursue any remedies for the enforcement of any pledge or lien upon the Site; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust or other lien or encumbrance or sale pursuant to any power of sale contained in any such mortgage or deed of trust, or other lien or encumbrance, the purchaser or purchasers and their successors and assigns and the Site shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants herein provided for, but not any past due obligations of Developer or Affordable Developer, as applicable, for which the applicable Developer or Developers shall remain liable. In no event shall any Mortgagee be in default of any such future obligations provided for in this Agreement until at least one hundred twenty (120) days after the date of the transfer of title to the Site or the applicable equity collateral, as the case may be, plus any cure periods provided for hereunder.

7.06 No Obligation to Construct Improvements or Pay Money Damages

No Mortgagee, including without limitation any Mortgagee who obtains title to the Site or any part thereof as a result of foreclosure proceedings or action in lieu thereof (but not including any other party who thereafter obtains title to the Site or any part thereof from or through such Mortgagee or any purchaser at a foreclosure sale other than the Mortgagee), shall in any way be obligated by the provisions of the Agreement to either pay money damages or other consideration to Successor Agency, or to construct or complete the Improvements, nor shall any covenant or any other provision in the Redevelopment Plan, the Project Area Declaration of Restrictions, or any other document, instrument or plat whatsoever be construed to so obligate any Mortgagee; provided, however, that nothing in this Agreement shall be construed to permit or authorize any Mortgagee to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or authorized in Section 5.02.

7.07 Accommodation of Mortgagee and Mortgagees Protections

Successor Agency is obligated to act reasonably in all dealings with Mortgagees, to make reasonable accommodations with respect to the interests of Mortgagees, and to agree to reasonable amendments to this Agreement as reasonably requested by a prospective mortgagee or mezzanine lender, and to execute any estoppels or similar documents reasonably requested by any Mortgagee or prospective mortgagee or mezzanine lender.

7.08 Mortgagees of Affordable Air Space Parcel

For purposes of the Affordable Air Rights Parcel, the provisions of this Article 7 may be supplanted in the sole discretion of the Executive Director of the Successor Agency and replaced by the provisions of the Air Rights Lease.

ARTICLE 8 - DEFAULTS AND REMEDIES

8.01 Developer Default

The occurrence of any one of the events or circumstances listed as items (a) through (l) below shall constitute an "**Event of Default**" by Developer under this Agreement thirty (30) days after Developer's receipt of written notice from the Successor Agency of the alleged default (unless an alternative cure period is otherwise set forth below), or in the case of a default not susceptible of cure within thirty (30) days, Developer fails to promptly commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, unless a different cure period is specified. Notwithstanding anything to the contrary in this Agreement, for the avoidance of doubt, no Event of Default by Affordable Developer, as included in Section 8.02, shall authorize or permit the Successor Agency to exercise any remedies against Developer (separate from any remedies applicable to an Event of Default of Developer) or excuse Successor Agency from performing its obligation to convey the Site to Developer as and when required by this Agreement (except as provided in Section 2.07(b)(ii)), and Developer shall have no obligations or liabilities for an Event of Default that is solely by Affordable Developer.

(a) Developer suffers or permits a Transfer to occur in a manner inconsistent with the provisions of Sections 2.02 or 6.02, or Developer allows any other person or entity (except Developer's authorized representatives or as otherwise contemplated by this Agreement or approved in writing by the Successor Agency) to occupy or use all or any part of the Site or the Tehama Parcel in violation of the provisions of this Agreement;

(b) After the Close of Escrow, Developer fails to pay real estate taxes or assessments on the Site or the Tehama Parcel prior to delinquency or places any mortgages, encumbrances or liens upon the Site, the Tehama Parcel or the Improvements on either, or any part thereof, in violation of this Agreement;

(c) Developer fails to achieve any milestone on or before the applicable time set forth in the Schedule of Performance, fails to diligently prosecute the construction of the Improvements to Completion of Construction on or before the applicable time(s) set forth in the Schedule of Performance or abandons or suspends construction of the Improvements for more than ten (10) consecutive days; and any such failure, abandonment or suspension continues for a period of thirty (30) days following the date of written notice thereof from Successor Agency. For the avoidance of doubt, the excusable delay provisions of Sections 8.08(a) and 8.08(b) are applicable to potential defaults under this Section 8.01(c);

(d) Developer defaults under any other agreement between Successor Agency and Developer and fails to cure the same in the manner provided under such other agreement, and such default shall not have been cured within thirty (30) days following the date of written demand to cure by Successor Agency to Developer, provided that Successor Agency's remedies for a default under the other agreement between Successor Agency and Developer shall be limited to the remedies respectively set forth therein;

(e) Developer fails to pay any amount required to be paid hereunder;

(f) Developer does not accept conveyance of the Site in violation of this Agreement upon tender by Successor Agency pursuant to this Agreement, or Developer fails to close escrow by the Outside Date for Close of Escrow for any reason other than failure of Developer Conditions or as otherwise provided herein, and such failure shall not have been cured within five (5) business days following the date of written demand to cure by Successor Agency to Developer;

(g) Developer is in default under Successor Agency's Equal Opportunity Program, Attachment 17; provided, however, Successor Agency's remedies for any default under Successor Agency's Equal Opportunity Program shall be only as set forth in Successor Agency's Equal Opportunity Program, Attachment 17;

(h) Developer fails to obtain a site permit with associated addenda, and all other necessary permits for the Improvements to be constructed on the Site and the Tehama Parcel within the periods of time specified in this Agreement, including the Schedule of Performance, as applicable;

(i) Developer does not submit all material Project Approval Documents as required by this Agreement within the periods of time respectively provided therefor in the Schedule of Performance, as applicable;

(j) After the Close of Escrow, Developer defaults in the performance of or violates any covenant, or any part thereof, set forth in Sections 2.02 or 4.04, the then-effective provisions of Article 5 or Article 9, the Declaration of Site Restrictions, Declaration of Affordability Restrictions, Commercial Space Restrictions or in the Grant Deed;

(k) Developer fails to perform under any other agreements or obligations on Developer's part to be performed under this Agreement and such failure or breach continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by Successor Agency to Developer to perform such agreement or obligation or cure such breach, or in the case of a default not susceptible of cure within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time-including, without limitation, any obligations set forth in Sections 8.01(i) and 8.01(j);

(l) A material breach of any representation or warranty made by Developer.

8.02 Affordable Developer Default

The occurrence of any one of the following events or circumstances shall constitute an "**Event of Default**" by Affordable Developer under this Agreement thirty (30) days after Affordable Developer's receipt of written notice from the Successor Agency of the alleged default and opportunity to cure (unless an alternative cure period is otherwise set forth below), or in the case of a default not susceptible of cure within thirty (30) days, Affordable Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, unless a different cure period is specified; provided, however, that no such matter shall constitute an Event of Default to the extent that, within thirty (30) days following its receipt of written notice from the Successor Agency that an Event of Default under this Section 8.02 exists, Developer proposes a substitute Affordable Developer to the Successor Agency for its approval, which approval shall not be unreasonably withheld, delayed or conditioned, and, within thirty (30) days following Successor Agency's approval, the substitute Affordable Developer agrees in writing to be bound by the terms of this Agreement from and after the date of substitution; provided, however, that Developer shall be obligated to commence the cure of any Affordable Developer Event of Default that (i) constitutes an emergency that threatens public health or safety, or (ii) if left uncured,

would threaten the ability of any replacement Affordable Developer to perform its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, for the avoidance of doubt, no Event of Default, as included in Section 8.01, by Developer shall authorize or permit the Successor Agency to exercise any remedies against Affordable Developer (separate from any remedies applicable to an Event of Default of Affordable Developer), and Affordable Developer shall have no obligations or liabilities for an Event of Default that is solely by Developer.

(a) Affordable Developer suffers or permits a Transfer to occur that is not expressly allowed under or consented to pursuant to Article 6; or Affordable Developer allows any other person or entity (except Affordable Developer's authorized representatives or as otherwise contemplated by this Agreement or approved in writing by the Successor Agency) to occupy or use all or any part of the Affordable Air Rights Parcel in violation of the provisions of this Agreement;

(b) Affordable Developer does not execute the Air Rights Lease and accept the leasehold interest of the Affordable Air Rights Parcel as and when required by, and subject to all terms and conditions of, this Agreement upon tender by Successor Agency pursuant to this Agreement, and such failure continues for a period of five (5) business days following the date of written notice from Successor Agency;

(c) Affordable Developer is in default under the Successor Agency's Equal Opportunity Program, Attachment 17; provided, however, that any rights to cure and Successor Agency's remedies for any default under the Successor Agency's Equal Opportunity Program shall be only as set forth in the Successor Agency's Equal Opportunity Program, Attachment 17;

(d) Affordable Developer defaults in the performance of or violates any covenant, or any part thereof, set forth in Article 5 but only to the extent such covenants apply to Affordable Developer and the Mid-Rise Affordable Project. The language of this paragraph shall not be construed to limit the right of the Affordable Developer to contest, under the terms of this Agreement, the allegation of default in the performance or violation of any covenant, or any part thereof, set forth in Article 5.

(e) Affordable Developer fails to perform any other agreements or obligations on Affordable Developer's part to be performed under this Agreement, other than Affordable Developer's failure to perform a condition to Close of Escrow under Section 2.07, or a material breach of any representation or warranty made by Affordable Developer.

(f) A material breach of any representation or warranty made by Affordable Developer.

Notwithstanding the foregoing, any act or omission by Affordable Developer that would otherwise constitute an Event of Default under this Section 8.02 that is a direct result of or solely attributable to an act or omission by Developer shall not be an Event of Default by Affordable Developer, and Affordable Developer shall have no liability therefor.

8.03 Remedies of Successor Agency upon the Occurrence of an Event of Default by Developer

Upon the occurrence of an Event of Default by the Developer, the Successor Agency shall have the remedies set forth below.

(a) Termination of Agreement/Retention of Good Faith Deposit

(i) Prior to Close of Escrow. Upon the occurrence of an Event of Default by Developer prior to Close of Escrow, Successor Agency may, in its sole option and as its sole and exclusive remedy, terminate this Agreement and in such case, Developer shall forfeit any right to reimbursement of the Good Faith Deposit and Successor Agency shall be entitled to receive and retain the Good Faith Deposit. For the sake of clarification, Section 8.03(c) shall not be applicable with respect to an Event of Default by Developer prior to Close of Escrow.

(ii) Prior to Commencement of Substantial Construction. Upon occurrence of an Event of Default by Developer after Close of Escrow but prior to Commencement of Substantial Construction, Successor Agency may, in its sole option, terminate this Agreement; in such case, Developer shall forfeit any right to reimbursement of the Good Faith Deposit and Successor Agency shall be entitled to receive and retain the Good Faith Deposit. In addition, Successor Agency shall have the right, under the Grant Deed and subject to the terms of this Agreement, to record a reversionary quitclaim deed, substantially in the form of Attachment 14 hereto ("**Developer's Quitclaim Deed**"), re-enter and take possession of the Site and the Tehama Parcel, and to terminate (and revest in Successor Agency) the right, title, or interest conveyed by the Grant Deed to Developer, at no cost to Successor Agency (collectively, the "**Successor Agency Power of Termination**"); provided, however, Successor Agency shall provide Developer and Title Company with at least three (3) business days prior written notice of its intention to instruct the Title Company to record Developer's Quitclaim Deed (which notice shall be in addition to any other notice provided under Section 8.01 above). If Successor Agency exercises the Successor Agency Power of Termination, then (i) Developer shall have no further right, title or interest in or to the Site and the Tehama Parcel and (ii) Successor Agency may record Developer's Quitclaim Deed and proceed with developing the Site and the Tehama Parcel in accordance with its obligations under the Implementation Agreement and the Transbay Affordable Housing Obligation.

THE PARTIES AGREE THAT SUCCESSOR AGENCY'S ACTUAL DAMAGES, IN THE EVENT OF DEFAULT BY DEVELOPER PRIOR TO COMMENCEMENT OF SUBSTANTIAL CONSTRUCTION, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT DESCRIBED IN THIS SECTION HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SUCCESSOR AGENCY'S DAMAGES AND AS A REMEDY AGAINST DEVELOPER, AT LAW OR IN EQUITY, IN THE EVENT OF DEFAULT COVERED BY THIS SECTION ON THE PART OF DEVELOPER. RETENTION OF SUCH AMOUNT BY SUCCESSOR AGENCY SHALL CONSTITUTE LIQUIDATED DAMAGES TO SUCCESSOR AGENCY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

SUCCESSOR AGENCY: _____ DEVELOPER: _____

If Successor Agency receives and retains the Good Faith Deposit as liquidated damages, exercises the Successor Agency Power of Termination, and receives title to the Site and the Tehama Parcel, free and clear of any obligation to convey the same to Developer, then Successor Agency shall not have the remedy of specific performance.

(b) Specific Performance. Except as provided above in Section 8.03(a) and solely with respect to the rights of Successor Agency after Commencement of Substantial Construction, Successor Agency shall have the right to institute an action for specific performance of the terms of this Agreement or of the Grant Deed to construct the Improvements.

(c) Additional Remedies. Successor Agency shall be entitled to exercise all other remedies at law or in equity, including, without limitation, (i) those provided in the Grant Deed (Attachment 10) and elsewhere in violation of the covenants described in Article 5; (ii) the Delay of Construction Tax Increment Fee described in Section 4.11; (iii) the Delay of Construction CBD Fee described in Section 9.03(a); (iv) the Delay of Construction CFD Fee described in Section 9.03(b); (v) the remedies set forth in the Equal Opportunity Program (Attachment 17); and (vi) the remedies set forth in the Prevailing Wage Provisions.

(d) Retention of Affordable Housing Fee. Termination of this Agreement for any reason prior to the execution of a loan agreement governing the distribution of the Successor Agency Loan shall not affect the Successor Agency's right under the Parcel F development agreement to receive and retain the Affordable Housing Fee to meet the Transbay Affordable Housing Obligation whether on the Site or elsewhere. After the execution of a loan agreement governing the Successor Agency Loan, the provisions of the loan agreement shall determine the Successor Agency's rights concerning the Affordable Housing Fee.

8.04 Remedies of Successor Agency Upon the Occurrence of an Event of Default by the Affordable Developer

Any Event of Default by the Affordable Developer under this Agreement will be considered an Event of Default under any agreements related to the development of the Improvements between the Affordable Developer and the Successor Agency or MOHCD (the "**Associated Documents**"). Accordingly, upon the occurrence of an Event of Default by the Affordable Developer, Successor Agency will be able to exercise all remedies provided for in the Associated Documents. Additionally, upon the occurrence of an uncured Event of Default by the Affordable Developer, and provided Developer has elected not to propose and engage a replacement Affordable Developer in accordance with the provisions of Section 8.02, the Successor Agency may propose a substitute affordable developer. Notwithstanding such approval rights, the Developer must work with the Successor Agency to identify and approve a substitute affordable developer upon the occurrence of an uncured Event of Default by the Affordable Developer in a timely manner so as not to affect the construction schedule and result in a Developer Event of Default.

8.05 Successor Agency Default

The occurrence of any one of the following events or circumstances shall constitute an Event of Default by Successor Agency under this Agreement:

(a) Successor Agency fails to convey the Site to Developer in violation of this Agreement, pursuant to Section 2.09, and such failure continues for a period of ten (10) days following the date of written notice thereof from Developer;

(b) Successor Agency fails to convey the leasehold interest in the Affordable Air Rights Parcel to Affordable Developer as and when required, and on the terms and conditions of, this Agreement, and such failure continues for a period of ten (10) days following the date of written notice thereof from the Affordable Developer; or

(c) Successor Agency fails to perform any other agreements or obligations on Successor Agency's part to be performed under this Agreement, and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by Developer to Successor Agency to perform such agreement or obligation, or, in the case of a default not susceptible of

cure within thirty (30) days, Successor Agency fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time.

8.06 Remedies of Developer and Affordable Developer

For an Event of Default by Successor Agency hereunder, Developer and Affordable Developer shall have the following remedies:

(a) Limitation on Damages. Successor Agency shall not be liable to Developer or Affordable Developer for damages caused by any default by Successor Agency, including general, special, or consequential damages, or to expend money to cure a default by Successor Agency, except as provided in subparagraph (e) below, subject to the limitations contained in subparagraph (d) below.

(b) Right of Termination. For an Event of Default by Successor Agency prior to Close of Escrow, in addition to its other remedies at law and in equity, Developer shall have the right to terminate this Agreement and obtain a prompt return of the Good Faith Deposit, less those amounts to be withheld as provided in Section 1.02.

(c) Other Remedies. Subject to subparagraphs (a), (b) and (d), Developers shall be entitled to exercise all other remedies at law and in equity.

(d) Non-liability of Successor Agency Members, Officials and Employees. No member, official or employee of Successor Agency, the TJPA or City shall be personally liable to Developer or Affordable Developer, or any successor in interest, for any default by Successor Agency, TJPA or City or for any amount which may become due to Developer or successor in interest under the terms of this Agreement.

(e) Successor Agency Liability. If Escrow fails to close due to a failure of a Developer Condition, the Good Faith Deposit shall be returned to Developer, but Successor Agency shall have no liability for money except as provided in this Section 8.06(e).

8.07 Rights and Remedies Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law, in equity or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such rights or remedies shall not preclude the exercise by such Parties of any other or further rights or remedies for the same or any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement shall be effective beyond the particular obligation of the other party or condition to its own obligation expressly waived and to the extent thereof, or a waiver in respect to any other rights of the party making the waiver or any other obligations of the other party.

8.08 Force Majeure/Extensions of Time

(a) Force Majeure

(i) In the event of Force Majeure (defined below), neither Successor Agency nor Developer, as the case may be, nor any successor in interest ("**Delayed Party**", as applicable) shall be considered in breach of or default in any obligation or satisfaction of a condition, and provided that the Delayed Party continues to diligently pursue the resumption or completion of construction or other

milestone, as applicable, and otherwise complies with the applicable requirements of this Section 8.08, all applicable dates set forth in the Schedule of Performance and Schedule of Important Project Dates shall automatically be extended for any period of Force Majeure; provided, however, Force Majeure shall apply only if the Delayed Party seeking the benefit of the provisions of this Section has notified the other party in writing no later than ten (10) business days (or 30 calendar days if notice is provided after the Close of Escrow) after learning of the enforced delay, stating the cause or causes thereof and providing an explanation of the delay and evidence of the basis for delay reasonably requested sufficient for the other Party to verify the delay. "**Force Majeure**" for purposes of this Agreement means events that cause enforced delays in the Delayed Party's performance of its obligations under this Agreement due to one or more of the following causes, to the extent the cause is beyond the Delayed Party's reasonable control: acts of God or of a public enemy, acts of governmental entities (but not those of Successor Agency with regard to its own acts) including delays in the issuance of any permits required for construction of any of the Improvements, fires, casualties, floods, earthquakes, epidemics, pandemics, quarantine restrictions, freight embargoes, inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (provided that Developer has ordered such materials on a timely basis), unusually severe weather, unanticipated geotechnical conditions, archeological finds on the Site or the Tehama Parcel that, pursuant to the Mitigation Measures, require delay in construction activity, substantial interruption of work because of labor disputes, administrative appeals, litigation and arbitration (provided that in each such case that the Delayed Party proceeds with commercially reasonable due diligence to resolve any dispute that is the subject of such action), changes in laws, codes or ordinances or in the interpretation thereof, delays of subcontractors due to any of these causes.

(ii) If the delay caused by Force Majeure prior to Close of Escrow extends for more than twelve consecutive (12) months (or such longer period consistent with Section 8.08(b) below), then either Successor Agency or Developer, by written notice to the other, may terminate this Agreement, whereupon the Good Faith Deposit (less those amounts to be withheld as provided in Section 1.02) shall promptly be returned to Developer and the Parties shall have no further liabilities or obligations under this Agreement arising or accruing following such termination.

(b) Inability to Obtain Financing

(i) If Developer is unable, through no fault of its own, to obtain (x) financing on Commercially Reasonable Terms (as defined below) or (y) bond or equivalent financing with respect to the Mid-Rise Affordable Project as a result of the Mid-Rise Affordable Project's scoring under the then-applicable scoring system used by CDLAC or its successor, provided that the availability of such bond or equivalent financing is based on a competitive process (in contrast to an over-the-counter application) at the time Developer seeks such financing; then Developer may request that Successor Agency extend the Outside Date for Close of Escrow for up to six (6) months (the "**First Extended Closing Date**") to provide Developer additional time to seek such financing or substitute financing. If Developer is unable to obtain financing described in clauses (x) and (y) immediately above sixty (60) days prior to the First Extended Closing Date, then Developer may request that Successor Agency extend the Outside Date for Close of Escrow for up to an additional six (6) months from the First Extended Closing Date, for a total of twelve (12) months to provide Developer additional time to seek such financing or substitute financing. Upon an extension of the Outside Date for Close of Escrow pursuant to this subsection (i), all applicable dates set forth in the Schedule of Performance and Schedule of Important Project Dates shall automatically be extended for an equivalent period of time. Upon requesting an extension under this Section 8.08(b)(i) and as a condition to the continued validity of the extension, Developer covenants to diligently pursue specified or substitute financing for the entire period of any extension granted hereunder.

(ii) Developer shall provide, for all requests for extensions of the Outside Date for Close of Escrow under this subsection, objective and independent evidence that it is unable, through no

fault of its own, to obtain the financing described in clauses (x) or (y) of Section 8.08(b), as applicable. Developer's extension request are subject to Successor Agency's approval in its reasonable discretion.

(iii) At the request of Developer, during any period of extension of the Outside Date for Close of Escrow pursuant to Section 8.08(b)(i), Successor Agency and Developer shall negotiate, in good faith, changes to the Budget and Scope of Development to reduce Improvements costs and to improve the financeability of the Improvements (*i.e.*, to value engineer the Improvements).

(c) "**Commercially Reasonable Terms**" shall mean, without limitation, (i) non-recourse (except as against the Site and assuming acceptance of standard terms typically required by an institutional lender), (ii) loan-to-cost equal to 65%, and (iii) maximum interest rate of LIBOR + 325 BPS or the equivalent rate associated with SOFR (Secured Overnight Financing Rate) from a reputable construction lender.

(d) Extensions by the Successor Agency Executive Director. If Developer has been unable to perform an obligation listed in the Schedule of Performance on or prior to date that is ten (10) business days prior to the applicable date stated in the Schedule of Performance despite Developer's reasonable and diligent efforts to perform such obligation, then Developer may notify Successor Agency of Developer's impending Event of Default for a failure to meet a date stated in the Schedule of Performance and may request an extension of the applicable date in the Schedule of Performance. Such request shall specify the number of days of extension requested, provided that extensions shall be requested in not less than 60-day increments and shall not exceed an aggregate of six (6) months for a particular date in the Schedule of Performance. Not later than five (5) business days after receipt of such notice, Successor Agency shall approve or disapprove such request, which shall not be unreasonably withheld or conditioned. Additionally, the Successor Agency Executive Director may extend the time for Developers' performance of any term, covenant or conditions of this Agreement or permit the curing of any default upon such terms and conditions as the Successor Agency Executive Director determines appropriate, from time to time, without the necessity for further Commission action, so long as the cumulative extensions of any particular item do not exceed a total of twelve (12) months after the dates established in the original, unextended Schedule of Performance (or, if applicable, Schedule of Important Project Dates). Notwithstanding the fact that Sections 8.08(a)(i) or (ii) above are not satisfied, the Successor Agency Executive Director may, upon approval by the Commission, extend the time for Developers' performance of any term, covenant or conditions of this Agreement or permit the curing of any default upon such terms and conditions as Successor Agency Executive Director determines appropriate, from time to time; provided, however, that any such waiver or extension or permissive curing of any particular default shall not release any of Developers' obligations nor constitute a waiver of Successor Agency's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

8.09 Other Rights and Remedies

The rights and remedies provided to Successor Agency and Developer in this Article 8 are in addition to and not in derogation of other rights and remedies found in this Agreement and in the Grant Deed, but not set forth in this Article 8, but in no event shall (i) Successor Agency have any liability for money or to expend money except as provided in Section 8.06(e).

8.10 General

(a) Subject to the limitations thereon contained in this Agreement, either party may institute legal action to cure, correct or remedy any default, or to obtain any other remedy consistent with the terms of this Agreement. Such legal actions shall be instituted in the Superior Court of the City and

County of San Francisco, State of California, and any other appropriate court in that City and County or, if appropriate, in the Federal District Court in San Francisco, California.

(b) In the event that any legal action is commenced by Developer against Successor Agency, service of process on Successor Agency shall be made by any legal service upon the Executive Director of Successor Agency, or its counsel, or in such other manner as may be provided by law. In the event that any legal action is commenced by Successor Agency against either Developer, service of process on Developer, as applicable, shall be made by personal service at the address provided for Section 12.03 or at such other address as shall have been given to Successor Agency by either of the Developers pursuant to Section 12.03 of this Agreement, or in any other manner as may be provided by law, and shall be valid whether made within or without the State of California.

ARTICLE 9 - SPECIAL TERMS, COVENANTS AND CONDITIONS

9.01 Timing of Completion; Mid-Rise Affordable Project.

No Residential Condominium Unit shall be eligible for, and the Developer shall not request that the City issue, a Temporary Certificate of Occupancy ("**Temporary C of O**") if such Temporary C of O would be issued prior to the City's issuance of the Temporary C of O for the Mid-Rise Affordable Project.

9.02 Mitigation Measures

Developer agrees that the construction and subsequent operation of all or any part of the Improvements shall be implemented, and otherwise be in accordance with all applicable mitigation measures set forth in the Mitigation Monitoring and Reporting Program ("**MMRP**") set forth in the Addendum to the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/Environmental Impact Report dated June 13, 2022 and included as Attachment 21. Prior to the Construction Commencement Date, Developer shall submit a mitigation plan that identifies responsible parties for complying with the requirements of the MMRP and a point of contact responsible for monitoring compliance with the MMRP. After start of construction activities, Developer shall submit quarterly reports to Successor Agency staff documenting compliance with the MMRP. Prior to receiving the CFCO, the applicant shall submit to Successor Agency staff a final report summarizing compliance with the MMRP during construction, including the start and end dates and duration of each construction phase, and all other specific information required in the MMRP. Developers shall provide to the entity, or entities, specified in Attachment 21, any required reports detailing the mitigation measures implemented by Developers and/or their contractors at the Site during demolition and construction of the Improvements until Completion of Construction of the Improvements, and through operation of the Improvements as applicable. These mitigation measures shall be incorporated by Developers into any appropriate contract for the construction or operation of the Improvements.

9.03 Established Districts.

(a) Community Benefit District.

(i) The Site and the Improvements are subject to the East Cut Community Benefit District ("**CBD**"), which was authorized by the Board of Supervisors on July 31, 2015 by Resolution No. 299-15. The CBD will help fund activities and improvements such as community services and maintenance of public improvements in the Transbay Center District to benefit the properties in the CBD, including maintenance of the rooftop park on the Transit Center, for a period of fifteen (15) years.

(ii) If the Completion of Construction does not occur by the dates specified in the Schedule of Performance (as such dates may be extended for Force Majeure), then Developer shall pay the Delay of Construction CBD Fee (as defined below). The "**Delay of Construction CBD Fee**" shall be an amount equal to the estimated CBD assessment amount that otherwise would have been due to the Assessor-Recorder if construction had completed by the dates specified in the Schedule of Performance (as so extended). For the purpose of this Section 9.03(b)(ii)(a)(ii), the "**amount that otherwise would have been due**" shall be the amount that would have been due under the assessments set forth in the Greater Rincon Hill Community Benefit District Management Plan dated July 2015 ("**District Management Plan**"), calculated as if the Improvements were subject to the District Management Plan from, and after, the date of Completion of Construction specified in the Schedule of Performance until the Improvements are subject to the District Management Plan.

(iii) If Developer has the right to vote in the future on renewal of the CBD, or on an amendment to the District Management Plan that would require Developer to pay an increased assessment for the Site and the Improvements that does not exceed the "Fair Share of Costs" (as defined below) attributable to the Site and the Improvements then Developer shall cast its ballot in favor of the CBD. "Fair Share of Costs" shall be as required in Proposition 218, meaning a portion of the costs described in Section 9.03(a)(i) that reflects a fair and equitable allocation of such costs amongst properties within the zone of special benefit of the public improvements in the Transbay District.

(iv) Developer shall pay the Delay of Construction CBD Fee to the TJPA. Developer shall not receive a credit of any kind with the Assessor-Recorder for any payments made pursuant to this Section 9.03(a).

(v) Developer waives and releases any and all rights, claims, losses, injuries, costs, damages, or causes of action that it may have now or in the future to challenge the initial assessment rates of the CBD, provided that the CBD does not require Developer to pay an initial assessment that exceeds the rates stated in Section 9.03(a)(ii). This waiver and release is a general release. Developer is aware of California Civil Code Section 1542, which reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
>
> TO GIVE FULL FORCE AND EFFECT TO THE ABOVE GENERAL RELEASE, DEVELOPER HEREBY EXPRESSLY, KNOWINGLY, AND VOLUNTARILY WAIVES ALL THE RIGHTS AND BENEFITS OF SECTION 1542 AND ANY OTHER SIMILAR LAW OF ANY JURISDICTION. BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.
>
> _____
> Developer acknowledges the above general release.

(b) Mello-Roos Community Facilities District.

(i) The Improvements (other than the Mid-Rise Affordable Project) are subject to the provisions of the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center) ("**CFD**"), as described in the CFD Rate and Method of Apportionment ("**RMA**") attached hereto as Attachment 22. The CFD will help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension, and other infrastructure in the Transit Center District area.

(ii) Prior to and as a condition of Close of Escrow, Developer shall deposit with the Title Company a duly executed and acknowledged "Unanimous Approval of Annexation to a Community Facilities District and Related Matters" form in favor of annexing the Site into the CFD to be dated by the Title Company following recordation of the Grant Deed.

(iii) If the Completion of Construction does not occur by the dates specified in the Schedule of Performance (as such dates may be extended for Force Majeure), then Developer shall pay the Delay of Construction CFD Fee (as defined below). The "**Delay of Construction CFD Fee**" shall be an amount equal to the CFD special tax amount that otherwise would have been due to the Assessor-Recorder if construction had completed by the dates specified in the Schedule of Performance (as so extended) less any special CFD tax amounts actually assessed and paid by Developer. For the purpose of this Section 9.03(b)(iii), the "**amount that otherwise would have been due**" shall be the amount that would have been due under the special tax rates set forth in the RMA, calculated as if the applicable Improvements were subject to the RMA from, and after, the date of Completion of Construction specified in the Schedule of Performance until such Improvements are subject to the CFD.

(iv) Developer shall pay the Delay of Construction CFD Fee to the TJPA. Developer shall not receive a credit of any kind with the Assessor-Recorder for any payments made pursuant to this Section 9.03(b).

(v) Developer waives and releases any rights it may have now or in the future to challenge the legal validity of the CFD or any part of the CFD. This waiver and release is a general release. Developer is aware of California Civil Code Section 1542, which reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
>
> TO GIVE FULL FORCE AND EFFECT TO THE ABOVE GENERAL RELEASE, DEVELOPER HEREBY EXPRESSLY, KNOWINGLY, AND VOLUNTARILY WAIVES ALL THE RIGHTS AND BENEFITS OF SECTION 1542 AND ANY OTHER SIMILAR LAW OF ANY JURISDICTION. BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

_____
Developer acknowledges the above general release

9.04 Affordable Housing Requirements

In addition to the requirements of Section 5.05, the following requirements shall specifically apply to the Affordable Housing Units:

(a) Affordable Housing in Project

The Project shall include no fewer than one hundred five (105) BMR units in the Tower Mixed-Income Rental Project, and no fewer than two hundred two (202) units (including one unrestricted manager's unit) in the Mid-Rise Affordable Project. The Affordable Housing Units will remain as affordable units at the initial level of affordability for the life of the Project consistent with Section 9.04(b) 9.04(b) and will be restricted by a recorded declaration in substantially the form of Attachment 19A (the "Declaration of Affordability Restrictions (Tower)") or Attachment 19B (the "**Declaration of Affordability Restrictions (Mid-Rise)**"), as applicable (and collectively or individually, as applicable, referred to herein as the "**Declaration of Affordability Restrictions**"). These Declarations shall (1) be in a first lien position and (2) not be subordinated to any lien or other encumbrance during the term of such restrictions.

(b) Level of Affordability

(i) Mid-Rise Affordable Project. With the exception of one (1) unrestricted manager's unit, all of the residential units in the Mid-Rise Affordable Project shall be BMR units and shall have a distribution of income restrictions such that the cumulative average income restrictions required of all units shall be at a level affordable to households earning on average, at initial occupancy, seventy-three percent (73%) or less of the Area Median Income as published annually by MOHCD for the City and County of San Francisco, derived in part from the income limits and median income determined by HUD for the HUD Metro Fair Market Rent Area that contains San Francisco, adjusted only for household size, but not high housing cost area ("**AMI**"). To achieve this average:

- 20 units or approximately ten percent (10%) shall be affordable to households earning no more than forty percent (40%) of AMI;
- 9 units or approximately four percent (4%) shall be affordable to households earning no more than forty-five percent (45%) of AMI (eight units at this income level must be one-bedroom units);
- 10 units or approximately five percent (5%) shall be affordable households earning no more than fifty percent (50%) of AMI (eight units at this income level must be one-bedroom units);
- 33 units or approximately sixteen percent (16%) shall be affordable to households earning no more than sixty percent (60%) of AMI;
- 39 units or approximately nineteen percent (19%) shall be affordable to households earning no more than seventy percent (70%) of AMI;
- 47 units or approximately twenty-three percent (23%) shall be affordable to households earning no more than eighty percent (80%) of AMI;
- 38 units or approximately nineteen percent (19%) shall be affordable to households earning no more than ninety percent (90%) of AMI;

- 5 units or approximately two percent (2%) shall be affordable to households earning no more than one hundred percent (100%) of AMI; provided, however, that in no event shall this tier of units exceed the then-applicable equivalent of 80% AMI, as published by the California Tax Credit Allocation Committee ("TCAC").

Notwithstanding the foregoing, Successor Agency shall allow for adjustments to the above AMI levels if either: (1) a market study provided by the Affordable Developer at the time a funding application is submitted to TCAC and/or at the start of the marketing and lease up period shows that the Mid-Rise Affordable Project rents are not at least ten percent (10%) below the then-market rate effective rents; or (2) the Mid-Rise Affordable Project's construction lender or tax credit investor requires changes due to the tax credit income averaging rules and regulations.

(ii) Tower Mixed-Income Rental Project. At least one hundred five (105) of the residential units within the Tower Mixed-Income Rental Project will be BMR units restricted for affordability at the following AMIs:

- 21 units or approximately twenty percent (20%) shall be affordable to households earning no more than one hundred percent (100%) of AMI;

- 22 units or approximately twenty percent (20%) shall be affordable to households earning no more than one hundred ten percent (110%) of AMI;

- 62 units or approximately sixty percent (60%) shall be affordable to households earning no more than one hundred twenty percent (120%) of AMI.

(iii) The affordability levels of the Mid-Rise Affordable Project units as set forth in this Section 9.04(b) shall be distributed among the unit types detailed in Section 9.04(c) below as proposed by Developer, provided that Successor Agency or its designee shall approve such distribution in its reasonable discretion. Successor Agency or its designee shall approve any material changes to this distribution, and shall not unreasonably withhold approval of changes necessary to comply with tax credit requirements in connection with project financing.

(c) Unit Size, Mix and Location

(i) Affordable Housing Unit Minimum Size. The Affordable Housing Units shall not be less than 400 net square feet for a studio unit, 525 net square feet for a one-bedroom unit, 800 net square feet for a two-bedroom unit, and 1,000 net square feet for a three-bedroom unit.

(ii) Mid-Rise Affordable Housing Unit Mix. Affordable Housing Units in the Mid-Rise Affordable Project shall include a mix of ten percent (10%) three-bedroom units, forty-three percent (43%) two-bedroom units, and thirty-seven percent (37%) one-bedroom units, and ten percent (10%) studio units.

(iii) Tower Mixed-Income Rental Project Affordable Housing Unit Mix. Affordable Housing Units in the Tower Mixed-Income Rental Project shall include a mix of eleven percent (11%) three-bedroom units, thirty-three percent (33%) two-bedroom units, forty-five percent (45%) one-bedroom units, and eleven percent (11%) studio units.

(iv) Tower Mixed-Income Rental Project Distribution. Affordable Housing Units in the Tower Mixed-Income Rental Project shall be distributed on Floors 2-20 (the lower two thirds of the Tower Mixed-Income Rental Project) of the Tower, explicitly as shown in Attachment 23. Successor Agency or its designee shall approve any changes to this distribution in writing.

(d) Comparability and Quality of Units

(i) Average Size and Appliance Comparability; Tower Mixed-Income Rental Project. The average size of Affordable Housing Units in the Tower Mixed-Income Rental Project shall be at least eighty percent (80%) of the average size of the same unit types in market-rate units in the Tower Mixed-Income Rental Project. The specific units and their square footages in satisfaction of this requirement are shown in Attachments 19a and 23. The categories of appliances installed in the Affordable Housing Units in the Tower Mixed-Income Rental Project shall match the categories of appliances installed in the market-rate units. For example, if the market-rate rental units have washer/dryer hook-ups, dishwashers, and refrigerators, then the Tower Project Affordable Housing Units shall have washer/dryer hook-ups, dishwashers, and refrigerators. In no event, however, must the appliances in the Affordable Housing Units be of the same or comparable brands as the appliances in the market-rate units.

(ii) Comparability of Interior Features; Affordable Housing Units. The interior features of the Affordable Housing Units in the Project need not be the same as or equivalent to those in the market-rate units, provided that they are of high quality, durable and are consistent with the then-current standards for new housing, and shall be as specified in Attachment 24, Comparability of Affordable Project Units, which details agreed-upon finishes and specifications for the Affordable Housing Units and which may be modified only by prior written approval by Successor Agency or its designee.

(e) Parking

(i) Required Parking Allocations. Parking for no less than one vehicle per every four units (or fraction thereof) within the Mid-Rise Affordable Project shall be made available to tenants of the Mid-Rise Affordable Project. Any vehicle parking made available to occupants of the Tower Mixed-Income Rental Project shall be made available to the tenants of the Affordable Housing Units at the same vehicle-to-unit ratio made available to the market-rate units in the Tower Mixed-Income Rental Project, as more particularly described in the Inclusionary Manual. Vehicle parking designated for Affordable Housing Units must remain designated for use by Affordable Housing Unit tenants for the life of the Project, subject to the limited exception pursuant to Section 9.04(e)(ii) below.

(ii) Affordable Housing Unit Parking Space Leasing and Rates. Parking shall be made available to residents of the Affordable Housing Units consistent with the Inclusionary Manual, as amended from time to time. The current rates are outlined below. Initial rates and thereafter parking pricing for subsequent re-rental shall adhere to the Inclusionary Manual. Increases following leasing of parking spaces to tenants of the Affordable Housing Units shall be according to the Inclusionary Manual. For the avoidance of doubt, except as expressly provided in the REA with respect to cost sharing, Affordable Housing Developer shall have no responsibility for the parking garage structure operation or maintenance and shall have no right to any revenue therefrom.

(i) For Affordable Housing Units designated at 80% AMI and below, the lesser of $100 per month or 80% of the Project's average monthly parking rate for market rate vehicle parking;

(ii) For Affordable Housing Units designated at 81% to 110% AMI, the lesser of $175 or 80% of the Project's average monthly parking rate for market rate vehicle parking;

(iii) For Affordable Housing Units designated at 111% -120% AMI, the lesser of $250 or 80% of the Project's average monthly parking rate for market rate vehicle parking.

(iii) Developer will follow procedures established in the Inclusionary Manual for offering and pricing leased parking to residents of Affordable Housing Units. Following initial lease-up, and if vehicle parking designated for Affordable Housing Units remain available and there are no Affordable Housing Unit tenants on a waitlist for vehicle parking, Developer may follow procedures established in the Inclusionary Manual to seek approval from MOHCD to lease vehicle parking rights at market rate on a month to-month basis until an Affordable Housing Unit tenant requests vehicle parking designated for use by tenants of Affordable Housing Units.

(f) Marketing and Occupancy Preferences

(i) The initial and subsequent leasing of all Affordable Housing Units will be subject to the marketing obligations described in Attachment 25, Marketing Obligations, which include occupancy preferences for, among others, Certificate of Preference ("**COP**") holders, Displaced Tenants, Neighborhood Residents, and other targeted populations; provided, however, that such preferences shall not be required to be provided to the extent that granting such preferences will cause the Mid-Rise Affordable Project or the Tower Mixed-Income Rental Project to be in violation of the Fair Housing Act, the requirements of the tax exempt bond law and regulations, the tax credit laws and regulations, and/or regulations for funding through the California Department of Housing and Community Development.

(ii) Certificate of Preference Program Targeting. Developer has prepared a strategy to maximize the number and success of COP holders in securing housing within the Affordable Housing Units ("**COP Enhanced Outreach Strategies**") attached hereto as Attachment 26. Developer shall incorporate the strategies described in Attachment 26 into the early outreach plans for the Mid-Rise Affordable Project and the Tower Mixed-Income Rental Project, as described in Section 9.04(f)(iii) below.

(iii) Early Outreach Plan. No later than thirty (30) days after the Commencement of Substantial Construction, Developer shall deliver for Successor Agency and MOHCD's review and approval early outreach plans for initial marketing of the Affordable Housing Units consistent with Attachment 25 and an early outreach plan for COP holders, inclusive of the strategies described in Attachment 26 (COP Enhanced Outreach Strategies). Developer shall provide a plan for the units in the Mid-Rise Affordable Project and a separate plan for BMR units within the Tower. Developer shall not start the outreach activities until the Successor Agency provides approval of the Early Outreach Plans.

(iv) Marketing Plans. At least nine (9) months prior to first Temporary C of O for a residential unit in the Mid-Rise Affordable Project and the Tower Mixed-Income Rental Project, respectively, Developer shall submit to Successor Agency and MOHCD for their review and approval marketing plans, including written tenant selection plans, for the initial and ongoing leasing of all Affordable Housing Units in accordance with Attachment 25. Developer shall provide a plan for the units in the Mid-Rise Affordable Project and a separate plan for BMR units within the Tower.

(g) Resident Services for the Mid-Rise Affordable Project. The following will be provided for residents within the Mid-Rise Affordable Project:

(i) The Mid-Rise Affordable Project shall be staffed at a ratio of one (1) full time resident services staff member for every one hundred (100) units.

(ii) The services staff will routinely evaluate and provide services that respond to the needs of resident households, including the unique needs of individuals, working families, families

with children, and seniors. Staff will help connect residents to existing services in the neighborhood, at nearby properties operated by the Affordable Developer or their affiliates, and throughout the City, as needed. Funding for services staff shall be provided through the operating budget of the Mid-Rise Affordable Project. The Developer and Affordable Developer will provide a complete resident services plan, that includes services staffing as well as other programs and positions, pursuant to the Schedule of Important Project Dates.

9.05 Mid-Rise Affordable Project Financing.

(a) Deliveries and Compliance. (i) The Developer and Affordable Developer will provide a draft and final development budget, table of sources and uses, and a 20-year operating budget for the Mid-Rise Affordable Project to Successor Agency prior to the Close of Escrow and as reasonably requested by Successor Agency staff to evaluate applications for state and local funding; (ii) Financing for the Mid-Rise Affordable Project must comply with the then-current MOHCD Underwriting Guidelines for multi-family housing projects.

(b) Successor Agency Loan. Upon the closing of Developer's construction financing (meaning closing of all financing evidenced pursuant to Section 2.08), and provided the Developer has paid the Affordable Housing Fee to Successor Agency and obtained all necessary approvals for the disbursement thereof, the Successor Agency shall provide the entirety of the Affordable Housing Fee through one affordable housing loan between the Successor Agency and the Affordable Developer ("**Successor Agency Loan**") to provide a subsidy of up to Forty Six Million Seven Hundred Forty Nine Thousand Nine Hundred Twenty Eight and 46/100 Dollars ($46,749,928.46) and subject to approval by the Citywide Affordable Housing Loan Committee.

(c) Additional Affordable Housing Subsidy. In addition to the Purchase Price, the Developer shall provide any additional subsidy required to complete the Mid-Rise Affordable Project and maintain its affordability in compliance with Section 9.04(b) above, after all non-Successor Agency funding sources available for affordable housing have been secured by the Affordable Developer. Other than the Successor Agency Loan, there will be no additional subsidy from the Successor Agency or MOHCD; neither the Successor Agency nor MOHCD shall be responsible for any cost over-runs associated with the Mid-Rise Affordable Project. Developers shall cooperate with the Successor Agency to seek Citywide Affordable Housing Loan Committee and Commission approval of the financing plan and the Successor Agency Loan, and shall attend any hearings related to these approvals.

(d) Tax Exempt Bond Financing. If the Developer and Affordable Developer utilize a bond financing structure for the Mid-Rise Affordable Project, bonds must be issued through MOHCD's Multifamily Securities Program. The Developer, with the assistance of the Affordable Developer, will work with Successor Agency staff to submit an application to the California Debt Limit Allocation Committee ("**CDLAC**") for an allocation of tax-exempt bond funding. Successor Agency shall take all actions necessary on its part with respect to preparing and filing the application for the allocation of tax-exempt bonds so that Developer shall at all times be in compliance with the Schedule of Performance. After an allocation is granted by CDLAC, MOHCD will have approximately 180-days from such allocation to issue the tax-exempt bonds. During the period after the allocation of bond volume cap and prior to the expiration of the approximate 180-day period, Developer, Affordable Developer, and Successor Agency staff will work with the Developer and Affordable Developer's counsel, Bond Counsel, a Financial Advisor, and the City Attorney to prepare bond documents which include: a City Regulatory Agreement; Indenture Agreement; and, a Borrower Loan Agreement in "substantially final form." The Board of Supervisors acting for and on behalf of the City, acting through MOHCD, shall adopt an inducement/reimbursement resolution and timely publish notice of and conduct a TEFRA Hearing approving the issuance of the tax exempt bonds and thereafter the City shall issue the bonds. Regardless of the financing structure, the Mid-

Rise Affordable Project will be subject to an affordability restriction, through the recording of a Declaration of Affordability Restriction, that will require the Affordable Housing Units within the Mid-Rise Affordable Project to remain as BMR units at the initial level of affordability (subject to the terms therein) for the life of the Project.

9.06 Streetscape Improvements

(a) Developer shall complete or cause to be completed the design and construction of the Streetscape Improvements, in compliance with the Redevelopment Requirements and all applicable State laws and City ordinances and regulations. Any costs incurred to complete the Streetscape Improvements, including the cost of relocating utilities, shall be the sole responsibility of Developer. As provided in Section 2.02, Developer's obligation under this Section 9.06, and as may be further made a condition of approval of the Permanent Subdivision of the Site, shall include the obligation to construct and thereafter to convey to the City all public improvements on or in the Tehama Parcel as described in the Scope of Development (the "**Tehama Street Public Improvements**"), and fee title to the Tehama Parcel. Developer shall be solely responsible for the costs of constructing the Tehama Street Public Improvements.

(b) For the life of the Project, Developer shall maintain or cause to be maintained the Streetscape Improvements in compliance with the Redevelopment Requirements and all applicable laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco, with the exception of the Tehama Street Public Improvements which shall be maintained by the City as City right of way after the City's acceptance thereof.

9.07 Open Space and Amenities

(a) Developer shall complete or cause to be completed the design and construction of the Public Open Space, Project Open Space and Amenities in accordance with the requirements of this Agreement including the Scope of Development.

(b) Developer shall maintain (or cause to be maintained) the Public Open Space and shall make it available to members of the public for the life of the Project. Prior to and as a condition of its receipt of Certification of Completion, Developer shall ensure compliance with this obligation by executing and recording in the Official Records a declaration encumbering the Site substantially in the form of Attachment 29 (Form of Declaration of Open Space Restrictions and Covenant to Maintain).

(c) Developer shall maintain, or cause to be maintained, the Project Open Space and Amenities, and make them available to residents of the Project, each in accordance with the requirements of the Scope of Development, the Redevelopment Requirements, laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco, and shall include said requirements in the REA or other recorded covenants, conditions and restrictions with respect to the Project.

(d) Ongoing operation and maintenance costs of the Public Open Space, Project Open Space and Amenities may be allocated between the Tower Market-Rate Condominium Project, the Tower Mixed-Income Rental Project and the Mid-Rise Affordable Project as described in Section 9.11, subject to approval by DRE.

(e) Storage spaces shall be unbundled from any specific condominium or rental unit, available at at-cost rates to all condominium and rental residents on a 24-hour and seven day per week basis, and offered on a proportional basis in terms of number of spaces between the market-rate and Affordable Housing Units. Storage spaces assigned to tenants of Affordable Housing Units shall be monitored by MOHCD consistent with the Inclusionary Manual, including but not limited to (i) ensuring that at-cost rates

for tenants of Affordable Housing Units dot not exceed the amounts specified in the Inclusionary Manual, and (ii) requiring that the Developer maintain a waitlist of tenants of Affordable Housing Units interested in storage spaces depending on availability.

9.08 Shared Parking Garage

(a) Developer shall complete or cause to be completed the design and construction of the Shared Parking Garage, an approximately 66,496 square foot underground garage. The Parties agree that all parking within the Shared Parking Garage shall be unbundled and that the Shared Parking Garage shall accommodate no more than 275 private vehicles valet-parked and/or parked via stackers, which shall include a minimum of two accessible car share vehicles (unless no car share operator exists in the San Francisco market), and a minimum of 556 secured bicycle parking spaces. The Developer shall operate and maintain (or cause to be operated and maintained) the Shared Parking Garage, consistent with the REA.

(b) The Developer shall be responsible for all costs associated with the design, construction, and operation of the Shared Parking Garage.

(c) Parking shall be unbundled, and shall be no more than one vehicle per residential unit (except to the extent additional spaces are made available pursuant to 9.04(e)(iii)), in accordance with the following criteria:

(i) One vehicle for every unit in the Tower Market-Rate Condominium Project;

(ii) One vehicle for every four units in the Mid-Rise Affordable Project; and

(iii) The remaining vehicle parking allocated proportionally between market-rate and Affordable Housing Units in the Tower Mixed-Income Rental Project.

(d) Bicycle spaces shall be allocated proportionately between the market-rate and the Affordable Housing Units in the Tower Project and Mid-Rise Affordable Project and shall be made available to tenants of Affordable Housing Units free of charge.

(e) The garage door shall remain open during the normal business hours, then operable via call button and/or key-fob after hours. No commuter parking shall be allowed.

9.09 Public Benefit and Community Serving Commercial Uses

(a) All of the ground floor commercial square footage within the Mid-Rise Affordable Project shall be leased, subject to Successor Agency approval, to users that qualify as a "**Community Serving Commercial Use**" or a "**Public Benefit Use**," as those terms are defined in the Mayor's Office of Housing and Community Development Commercial Space Underwriting Guidelines (Feb. 2, 2018) (Attachment 27), as amended from time to time, or that meet a comparable standard if MOHCD no longer publishes Commercial Space Underwriting Guidelines ("**Community Commercial Space**"). Qualifying uses under the MOHCD Commercial Guidelines include the following:

(i) "Community Serving Commercial Use" means a land use, typically retail or other sales and services use, that provides a direct benefit to the community, e.g. a food market with affordable and healthy produce and other goods, community banking, or other neighborhood serving uses that have a demonstrated benefit to the residents of the Project; and

(ii) "Public Benefit Use" means a land use, typically programs or services, that primarily benefits low-income persons, is implemented by one or more 501(c)(3) public benefit corporations, and has been identified by the City or community as a priority use. Examples include, but are not limited to, childcare centers, adult day health centers, nonprofit office space, public libraries, supportive services for the residents of the affordable housing development, health clinics that serve the local community at no or low cost, arts-related spaces that provide programs, and classes and/or exhibition spaces available to community members at no or low cost.

(b) The Community Commercial Space will be integrated into the Mid-Rise Affordable Project under the ownership of the Affordable Developer (or by affiliate of Affordable Developer or master lease structure from Affordable Developer to an affiliate of Mercy Housing California as the master tenant). Alternatively, Affordable Developer may seek to obtain a commercial space subdivision (the "**Commercial Subdivision**") to create a separate legal parcel for the Community Commercial Space, which would be transferred and owned by an affiliate of Mercy Housing California (the "**Commercial Subdivision Owner**"). Prior to establishing either a master lease or a Commercial Subdivision, Affordable Developer will seek Successor Agency approval of the applicable structure. Affordable Developer (or its affiliate or master tenant) or the Commercial Subdivision Owner, as applicable, will be responsible for operating and leasing the Community Commercial Space in accordance with the restrictions specified in this Section 9.09. Revenue generated from the leasing of the Community Commercial Space will be used to pay Community Commercial Space expenses including operating and leasing expenses, service approved debt (if applicable), fund expenses related to shared common operating expenses as established in the REA and/or common area maintenance agreements. Net revenue generated from the leasing of the Community Commercial Space, regardless of the structure (integration with the Mid-Rise Affordable Project, Commercial Subdivision, or master lease), will be used to fund reserves for future capital/tenant improvements for the benefit of the Community Commercial Space. If there is no subdivision, revenue and expenses related to the Community Commercial Space will be incorporated into the operating budget of the Mid-Rise Affordable Project. If the Mid-Rise Affordable Project includes financing from the California Department of Housing and Community Development ("**HCD**") and there is no subdivision, the Community Commercial Space within the Mid-Rise Affordable Project shall be subject to HCD requirements regarding commercial income.

(c) Declaration of Restrictions. Prior to commencement of the marketing process, if the Community Commercial Space is a separate commercial condominium then the Community Commercial Space will be restricted by a recorded Declaration in substantially the form of Attachment 28 (the "**Declaration of Restrictions for Community Commercial Space**"). The Declaration shall (1) be in a first lien position and (2) not be subordinated to any lien or other encumbrance during the term of such restrictions.

(d) Warm Shell Conditions. Developer shall provide the Community Commercial Space in "**Warm Shell**" condition as defined by the MOHCD Commercial Space Underwriting Guidelines (Attachment 27) as amended from time to time by MOHCD, by the date of temporary certificate of occupancy for the Mid-Rise Affordable Project.

9.10 Transfer Payment

(a) Subject to any applicable requirements of the California Department of Real Estate and California Civil Code section 1098, and prior to the sale of the first Residential Condominium Unit, Developer shall (i) record a declaration and notice applicable to all Condominium Units ("**Transfer Payment Covenant and Notice**") in the form of Attachment 20, requiring that the transfer of each Residential Condominium Unit shall be subject to a transfer payment equal to 0.5 percent of the market-

rate transfer price (the "**Transfer Payment**") (ii) demonstrate, to OCII's satisfaction, that the Transfer Payment Covenant and Notice is noticed and documented in satisfaction of applicable DRE regulations.

(b) Following the initial sale of the Residential Condominium Units by the Developer, each subsequent transfer of a Residential Condominium Unit shall be subject to the Transfer Payment, to be made prior to or commensurate with each and every subsequent transfer of each Residential Condominium Unit.

(c) The Transfer Payment funds shall be used by Successor Agency or its designee for maintenance and replacement costs of publicly accessible open space constructed adjacent to the Project. Developer and its successors and the future owners of all the Project shall have no right to challenge the appropriateness or the amount of any expenditure so long as it is used for maintenance uses.

(d) The provisions of this Section 9.10 shall survive the expiration or termination of this Agreement, and shall constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code Section 1468. The Transfer Payment shall be disclosed in the DRE disclosure packages for the Project.

9.11 Review of Condominium Association Documents.

(a) Developer shall not submit any of the following to California Department of Real Estate ("**DRE**") for review and approval without providing Successor Agency an opportunity to review and approve: (i) reciprocal easement agreements, (ii) covenants, conditions and restrictions, (iii) Preliminary Public Report Applications; (iv) Conditional Public Report Applications; (v) Final Public report Applications; (vi) Bylaws and Articles of Incorporation, and (vii) budgets for the Master Association and Market-Rate Association, Master Budget. Prior to submitting revisions to any of the above for DRE approval, Developer shall submit same to Successor Agency for its review and approval for consistency with this Agreement. To the extent permitted by DRE, Developer shall list Successor Agency as an interested party to receive all correspondence to the materials submitted to subsections (i) through (iv) above. If not permitted by DRE, then Developer shall, within five (5) business days of receipt, provide to Successor Agency a complete copy of any and all correspondence received from DRE concerning the foregoing listed materials.

(b) Prior to the closing of Developer's construction financing for the Mid-Rise Affordable Project or effective date of the Air Rights Lease, whichever is sooner, Developers shall cause to be executed and recorded covenants, conditions and restrictions and reciprocal easements (collectively, the "**Reciprocal Easement Agreement**" or "**REA**") in forms prepared by Developers and approved by the Successor Agency in its reasonable discretion.

(c) OCII, in its capacity as owner of the Affordable Air Rights Parcel, shall be a consent signatory to the REA and shall be provided an opportunity to review and approve the REA as described herein.

(d) The REA shall address, among other things, the following:

(i) Use restrictions and access to open space, amenities, and common areas;

(ii) Maintenance obligations related to the Shared Parking Garage, Streetscape Improvements, Public Open Space, Project Open Space, common areas, and Amenities, among other things;

(iii) Shared expenses for shared maintenance areas between each component of the Project. Among others, expense allocations shall specifically describe Tower Mixed-Income Rental Project and, Tower Market-Rate Condominium Project, and Mid-Rise Affordable Project responsibility and expense sharing for property taxes and insurance for shared maintenance areas, which, for the Mid-Rise Affordable Project, shall escalate at a constant annual rate and which shall not include any future tax reassessments (whether due to a transfer of the Tower Mixed-Income Rental Project or Tower Market-Rate Condominium Project or otherwise), all as further set forth in the Reciprocal Easement Agreement;

(iv) If any Community Commercial Space does not directly connect to the rear or "back-of-house" corridor of the applicable building for direct access to certain services provided through the rear or "back-of-house" corridor of such building to other Commercial Units, such as trash collection or curb delivery service, the means for the provision of such services to that Community Commercial Space, at no additional cost to the affected Community Commercial Space;

(v) Easements;

(vi) The allocation of vehicle spaces within the Shared Parking Garage;

(vii) Membership in the owners' association and association assessments;

(viii) A methodology to reach agreement about any shared expense increases other than inflationary increases among the Mid-Rise Affordable Project ownership, Tower Mixed-Income Rental Project ownership, and the Tower Market-Rate Condominium Project ownership association; and

(ix) Transfer Payment requirements, among other things.

9.12 Liquidated Damages.

The Delay in Construction Tax Increment Fee, Delay in Construction CBD Fee, and Delay in Construction CFD Fee (collectively "**Delay Fees**") shall be paid, if due, as liquidated damages to compensate the TJPA and Successor Agency. The Parties agree that, considering all the circumstances on the date of this Agreement, the actual damages suffered by the TJPA and Successor Agency in the event that Completion of Construction fails to timely occur would be difficult or impracticable to determine, and that the Delay Fees are a reasonable estimate of the damages that the TJPA and Successor Agency would incur in such event.

9.13 TJPA Third Party Beneficiary.

The TJPA is an intended third party beneficiary of Sections 4.11, 9.03(a)(ii) and (iv), and 9.03(b)(iii) and (iv) (and those Sections only) with the right to enforce the terms and provisions of those Sections (and those Sections only).

ARTICLE 10 - SUCCESSOR AGENCY EQUAL OPPORTUNITY PROGRAM

Developers will comply with Successor Agency's Equal Opportunity Program, as described in this Article 10 and in Attachment 17, and will submit all documents required pursuant to the policies included in Attachment 17 ("**Equal Opportunity Program**") in accordance with the timeframes specified therein.

10.01 Non-Discrimination

Non-Discrimination in Benefits. Developers do not as of the date of this Agreement and will not during the term of this Agreement, in any of their operations in San Francisco or with respect to their operations under this Agreement (i.e., providing services related to the Development project) elsewhere in the United States discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership had been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Successor Agency's Non-Discrimination in Contracts and Benefits Policy, adopted September 9, 1997, as amended February 4, 1998 and as set forth in Attachment 17.

10.02 Compliance with Minimum Compensation Policy and Health Care Accountability Policy

(a) Successor Agency finds that it has a significant proprietary interest in the Site that is being transferred to Developer, pursuant to this Agreement. Developers will comply with the applicable provisions of Successor Agency's Minimum Compensation Policy ("**MCP**"), Attachment 17, and Health Care Accountability Policy ("**HCAP**"), Attachment 17, adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time (jointly, "**Policies**"). The requirements of the Policies include the following:

(i) the payment of the "Minimum Compensation" specified in MCP Section 3 to all "Covered Employees," as defined under MCP Section 2.7, who work on the Improvements, who are employed by Developer or any of its subcontractors who enter into an "Included Subcontract" (as defined in Attachment 17).

(ii) the payment of one of the health care benefit options described in HCAP Section 3 as to all "Covered Employees," as defined under HCAP Section 2.7, who work on the Project, who are employed by Developer or any of its subcontractors who enter into an "Included Subcontract" (as defined in Attachment 17).

10.03 Small Business Enterprise and Workforce Agreements

(a) Developers and Successor Agency acknowledge that the Improvements and the Project will create employment opportunities at all levels, including opportunities for qualified economically disadvantaged small business enterprises, qualified economically disadvantaged Project Area residents and San Francisco residents. In recognition of these opportunities, Developer shall develop and implement the Small Business Enterprise Agreement described in Attachment 17, and the Construction Workforce Agreement described in Attachment 17.

(i) Successor Agency shall rely on the Office of Economic and Workforce Development - CityBuild ("**CityBuild**") to implement the Construction Workforce Agreement described in Attachment 17, the First Source Hiring Agreement described in Attachment 17, and the Trainee Hiring Goal in the Small Business Enterprise Agreement described in Attachment 17; accordingly, within thirty (30) days after the Effective Date of this Agreement, Developer shall execute an agreement with CityBuild to fund CityBuild's staff costs for such services, up to a maximum of Two Hundred Fourteen Thousand Nine Hundred Fifty Dollars ($214,950) of staff costs for every Five Hundred Million Dollars ($500,000,000) in total Project costs.

10.04 Prevailing Wages (Labor Standards)

(a) Developers agree to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment 17 for construction work done at the Site and Tehama Parcel prior to the issuance of the City's Final Certificate of Occupancy.

10.05 SBE Mentoring and Capacity Building Program

(a) Developer shall finance and, in consultation with the Successor Agency and the Developer's General Contractor, implement a Mentoring and Capacity Building Program ("**Mentoring Program**") specific to the Scope of Development. The program will provide SBE's with directed coaching, educational input, and mentoring from industry experts complementary to the Successor Agency's existing SBE Policy goals in order to build small business capacity. Specific efforts will be made to break up scopes of work to enhance SBE participation.

(b) Program initiatives will consist of:

(i) Providing One Hundred Thousand Dollars ($100,000) to the Successor Agency for the purpose of conducting a study on the availability, capacity and needs assessment of local SBE contractors to perform on large construction projects, such as the Project. Developer shall provide payment to the Successor Agency or its designee within thirty (30) days after the Effective Date of this Agreement. The Successor Agency will endeavor to complete the study within nine months of the Effective Date of this Agreement, after which the study's findings will be used to inform the Successor Agency, Developers, and Developers' general contractor about their ability to meet the Successor Agency's SBE goal, the level of SBE participation if less than fifty percent, and the means to obtain SBE participation;

(ii) Providing financial assistance by Developer of Twenty-Five Thousand Dollars ($25,000) per year for three (3) years to the City's Contractor Development Program, or an existing training/ technical assistance program acceptable to the Successor Agency, to assist local SBE contractors to compete and perform work on the Improvements. The Developer shall provide payment for the initial year within thirty (30) days after the Effective Date of this Agreement and annually thereafter;

(iii) Implementation by Developer of a General Contractor selection criteria to ensure General Contractor participation in the City's Mentor-Protégé program (https://sfgov.org/cmd/cmd-mentor-protege-program-1), or an equivalent program acceptable to the Successor Agency. The Developer shall provide the selection criteria to the Successor Agency for its review and acknowledgement prior to the Developer's efforts to solicit a General Contractor;

(iv) Developer shall encourage first-tier non-SBE subcontractors to participate in the City's Mentor-Protégé program or similar teaming relationships with SBEs; and

(v) Developer shall work cooperatively with the Successor Agency and ensure best faith efforts are exercised by the General Contractor and its first-tier subcontractors to break up scopes of work for lower-tier small business participation.

ARTICLE 11 - INDEMNITY

11.01 Developer Indemnification

Developer shall indemnify, defend, and hold harmless the Successor Agency, the City, the TJPA and their respective members, officers, agents and employees ("**Indemnified Parties**") from and

against any losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney's fees and court costs) arising out of this Agreement, including with respect to any challenge to the entitlement of Developer to undertake the program described in the Scope of Development, or in any way related to the death of or injury to any person or damage to any property occurring on or adjacent to the Site and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer and their agents, employees or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including reasonable attorneys' fees and court costs) to the extent the same arise out of (i) the gross negligence or willful misconduct of the Indemnified Party seeking to be indemnified, or (ii) the breach under this Agreement of an obligation of the Indemnified Party seeking to be indemnified, provided that the Successor Agency may require that the Developer defend the Indemnitee Parties against claims pursuant to this Section until it is established that such claims are not subject to this indemnity requirement so long as provided, the Indemnified Party (or Parties) shall reimburse the Developer such defense costs in proportion to the degree of the negligence or fault of such Indemnified Party (or Parties).

11.02 Affordable Developer Indemnification

Affordable Developer shall indemnify, defend, and hold harmless the Indemnified Parties from and against any losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney's fees and court costs) arising out Affordable Developer's obligations under this Agreement or in any way related to the death of or injury to any person or damage to any property occurring on or adjacent to the Site and directly or indirectly caused by any acts done thereon or any acts or omissions of Affordable Developer and their agents, employees or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including reasonable attorneys' fees and court costs) to the extent the same arise out of (i) the gross negligence or willful misconduct of the Indemnified Party seeking to be indemnified, or (ii) the breach under this Agreement of an obligation of the Indemnified Party seeking to be indemnified, provided that the Successor Agency may require that the Affordable Developer defend the Indemnitee Parties against claims pursuant to this Section until it is established that such claims are not subject to this indemnity requirement (so long as provided, the Indemnified Party (or Parties) shall reimburse the Affordable Developer such defense costs in proportion to the degree of the negligence or fault of such Indemnified Party (or Parties).

11.03 Survival

The obligation of Developer, Affordable Developer, or both, under this Article 11 shall survive Successor Agency's recordation of the Certificate of Completion as to any acts or omissions occurring prior to such recordation.

ARTICLE 12 - GENERAL PROVISIONS

12.01 Successor Agency Costs

The Developer shall be responsible for paying any costs associated with this transaction and the Improvements until the Certificate of Completion, as defined in Section 4.13, is recorded, either directly or through reimbursement of any related Successor Agency costs, including, but not limited to, Successor Agency's legal counsel to represent Successor Agency, staffing costs, and third party costs including, but not limited to, title report costs, title insurance premiums and endorsement charges, escrow fees, surveys, environmental review, parcel mapping, lot line adjustments, quiet title actions, permits, inspections, and costs on all matters related to the negotiation and implementation of this Agreement ("**Successor Agency Costs**"). The Successor Agency shall submit quarterly invoices for such costs and Developer shall reimburse Successor Agency for its costs within forty-five (45) days of receiving Successor

Agency invoices. If the Developer fails to pay such invoices with such forty-five (45) day period, then such event will be considered an Event of Default under this Agreement.

12.02 Provisions with Respect to Time Generally

All references in this Agreement to time limitations, including those in the Schedule of Performance and Schedule of Important Project Dates, shall mean such time limitations as they may be extended pursuant to the terms of this Agreement.

12.03 Notices

Any notice, demand or other communication required or permitted to be given under this Agreement by either party to the other party shall be sufficiently given or delivered if transmitted by (i) certified United States mail, postage prepaid, (ii) personal delivery, or (iii) nationally recognized private courier services, in every case addressed as follows:

If to Successor Agency:	Successor Agency to the Redevelopment Agency of the City and County of San Francisco One South Van Ness Avenue, Fifth Floor San Francisco, California 94103 Attention: Executive Director
With copy to:	San Francisco Mayor's Office of Housing and Community Development One South Van Ness Avenue, Fifth Floor San Francisco, California 94103 Attention: Director
If to Affordable Developer:	Mercy Housing California 1256 Market Street San Francisco, CA 94102 Telephone: (415) 355-7100
If to Developer:	F4 Transbay Partners, LLC c/o Hines 101 California Street, Suite 1000 San Francisco, CA 94111 Attn: Cameron Falconer Telephone: (415) 982-6200
With copies to:	Charles J. Higley Farella Braun & Martel LLP Russ Building 235 Montgomery Street 17th Floor San Francisco, CA 94104 Telephone: (415) 954-4902

Any such notice, demand or other communication transmitted by certified United States mail, postage prepaid, shall be deemed to have been received seventy-two (72) hours after mailing (unless

it is never delivered), and any notice, demand or other communication transmitted by personal delivery, or nationally recognized private courier service shall be deemed to have been given when received by the recipient. Any party may change its address for notices under this Section 12.03 by written notice given to the other party in accordance with the provisions hereof.

12.04 Time of Performance

(a) All dates for performance (including cure) shall expire at 5:00 p.m. (San Francisco, California time) on the performance or cure date.

(b) A performance date which falls on a Saturday, Sunday or Successor Agency or national holiday is automatically extended to the next day which is not a Saturday, Sunday or Successor Agency or national holiday.

(c) Unless otherwise specified, whenever an action is required in response to a submission, request or other communication, the responding party shall respond within fifteen (15) business days.

(d) Time is of the essence with respect to each provision of this Agreement, including each milestone set forth in this Agreement, but subject to all express extension, notice and cure rights in this Agreement.

12.05 Attachments/Recitals

All attachments and recitals to this Agreement are hereby incorporated herein and made a part hereof as if set forth in full.

12.06 Non-Merger in Deed

None of the provisions of this Agreement are intended to, or shall be, merged by reason of any deed transferring title to the Site from Successor Agency to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

12.07 Headings

Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The terms "Paragraph" and "Section" may be used interchangeably.

12.08 Successors and Assigns

This Agreement shall be binding upon and, subject to the provisions of Article 6, shall inure to the benefit of, the successors and assigns of Successor Agency, Developer, Affordable Developer, and any Mortgagee and where the term "Developer", "Affordable Developer", "Successor Agency" or "Mortgagee" is used in this Agreement, it shall mean and include their respective successors and assigns, including as to any Mortgagee, any transferee of such Mortgagee or any successor or assign of such transferee, whether or not the terms "successors and assigns" are used in conjunction therewith, except where the Agreement expressly provides that successors and assigns are not so included.

12.09 Counterparts/Formal Amendment Required

(a) This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

(b) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(c) Any modifications or waiver of any provisions of this Agreement or any amendment thereto shall be done in accordance with the provisions of this Agreement, and shall be made in writing and signed by a person or persons having authority to do so, on behalf of both Successor Agency and Developer.

12.10 Authority of Parties

Successor Agency and Developer each represent and warrant to the other party that this Agreement and all documents and delivered at Close of Escrow: (a) are, or at the time of Close of Escrow will be, duly authorized, executed and delivered by that party; (b) are, or at the time of Close of Escrow will be, legal, valid and binding obligations of that party; and (c) do not, and at the time of Close of Escrow will not, violate any provision of any agreement or judicial order to which that party is a party or to which that party is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of the parties contained herein or in other agreements or documents executed by the parties in connection herewith, shall survive the Close of Escrow.

12.11 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

12.12 Recordation

Title Company shall cause this Agreement to be recorded in the Official Records at Close of Escrow.

12.13 Estoppels

At the request of any party, the other Parties, within ten (10) days following such request, shall execute and deliver to the requesting Party a written statement in which such other Parties shall certify that this Agreement is in full force and effect; that this Agreement has not been modified or amended (or stating all such modifications and amendments); that no Party is in default under this Agreement (or setting forth any such defaults); that there are not then existing set-offs or defenses against the enforcement of any right or remedy of any Party, or any duty or obligation of the certifying Parties (or setting forth any such set-offs or defenses); and as to such other matters relating to this Agreement as the requesting Party shall reasonably request.

12.14 Attorneys' Fees

In the event that any Party brings a legal action to enforce rights under this Agreement against any other Party, the prevailing Party in any such proceeding will be entitled to recover its reasonable attorneys' fees and costs of the proceeding.

12.15 Further Assurances

Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

12.16 No Personal Liability

(a) No member, official or employee of Successor Agency or the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by Successor Agency or for any amount which may become due to Developer or successor or on any obligations under the terms of this Agreement.

(b) No officer, director, member, employee, agent or shareholder of Developer or Affordable Developer shall be personally liable for the performance of Developer's obligations under this Agreement, and neither Successor Agency nor any of its successors and assigns shall seek recourse for enforcement or satisfaction of this Agreement against any general or limited partner, officer, director, member, employee, agent or shareholder of Developer or Affordable Developer. No personal judgment shall be sought or obtained against any of the foregoing in connection with this Agreement. Neither Developer, Affordable Developer nor any of the foregoing parties shall in any circumstance be liable for any consequential damages of any kind or nature.

12.17 Effective Date

The effective date of this Agreement (the "**Effective Date**") and the parties' rights and obligations hereunder shall be the date on which the Plan Amendment becomes effective. Successor Agency shall insert such date into the appropriate locations in this Agreement, but the failure to do so shall not in any way affect the enforceability of this Agreement.

ARTICLE 13 - REFERENCES AND DEFINITIONS

Terms are defined in this Article 13 or have the meanings given them when first defined.

2008 Option Agreement is defined in Recital G.

Additional Purchase Payment is defined in Section 1.01(b).

Affordable Air Rights Parcel is defined in Recital W.

Affordable Developer is defined in Preamble.

Affordable Housing Fee means the $46,749,928.46 to be paid by Developer to the Successor Agency upon the satisfaction of certain conditions specified in the Parcel F development agreement approved by City Ordinance No. 0042-21, to fund the Successor Agency's obligation to fulfill the Transbay Affordable Housing Obligation.

Affordable Housing Units means income-restricted units in the Tower Mixed-Income Rental Project and the Mid-Rise Affordable Project and is defined in Recital U.

Agreement means this Disposition and Development Agreement.

Amenities mean those things described in items I.A.1.d, I.A.2.f and g, I.B.4 and I.B.5 in Attachment 4 (Scope of Development).

AMI is defined in Section 9.04(b)(i).

Air Rights Lease is defined in Recital X and the form is attached at Attachment 12.

Amount that otherwise would have been due is defined in Section 9.03(b)(ii)9.03(a)9.03(a)(ii) and Section 9.03(b)(iii).

Approved Title Conditions is defined in Section 2.04(a) and specified in Attachment 8, Approved Title Conditions.

Associated Documents is defined in Section 8.04.

Block 4 is defined in Recital M.

Block 4 Option Agreement is defined in Recital R.

BMR means below market rate and is defined in Recital S.

Board of Supervisors means the Board of Supervisors of the City and County of San Francisco and is defined in Recital B.

Bona Fide Institutional Lender means any one or more of, a bank, savings and loan association or savings bank, commercial bank, pension fund, real estate investment trust, investment bank, insurance company, trust company, equity fund, commercial credit corporation, pension plan, pension fund or pension advisory firm or governmental agency, in each case, who customarily makes loans of the type contemplated for the construction of the Improvements and/or permanent financing for the Project and who have in place standard construction disbursement and monitoring systems reasonably satisfactory to Successor Agency.

Budget is defined in Section 2.08(a).

Buyer's Inclusionary Obligation is defined in Recital S.

CDLAC means the California Debt Limit Allocation Committee and is defined in Section 9.05(d).

Caltrans is the California Department of Transportation and is defined in Recital G.

Caltrans Power of Termination is defined in Recital M.

CBD means the Greater Rincon Hill Community Benefit District authorized by the Board of Supervisors on July 31, 2015 by Resolution No. 299-15 and is defined in Section 9.03(a).

CFCO means DBI's Final Certificate of Occupancy for the Improvements and is defined in Section 4.13(a).

CFD means the City and County of San Francisco Transbay Center District Plan Mello-Roos Community Facilities District No. 2014-1 and is defined in Section 9.03(b)(i).

Certificate of Completion is defined in Section 4.13.

Change in the Improvements is defined in Section 5.07.

City means the City and County of San Francisco and is defined in Recital E.

CityBuild means the Office of Economic and Workforce Development – CityBuild and is defined in Section 10.03(a)(i).

Close of Escrow means the consummation of the sale of property contemplated herein in accordance with escrow instructions provided by Developer and Successor Agency and is defined in Section 2.03(a).

Commencement of Substantial Construction is defined in Section 4.08(b).

Commercial Subdivision is defined in Section 9.09(b).

Commercial Subdivision Owner is defined in Section 9.09(b).

Commercial Units have the meaning set out in Recital U.

Commercially Reasonable Terms is defined in Section 8.08(c).

Commission means the Successor Agency Commission, commonly known as the Commission on Community Investment and Infrastructure, the legislative body of the Successor Agency and is defined in Recital H.

Community Commercial Space is defined in Section 9.09(a).

Community Serving Commercial Use is defined in Section 9.09(a) and the MOHCD Commercial Space Underwriting Guidelines Attachment 27.

Completion of Construction means the date on which Successor Agency issues the Certificate of Completion and is defined in Section 4.13(c).

Construction Commencement Date is defined in Section 4.08(a).

Construction Contract is defined in Section 2.08(f).

Cooperative Agreement is defined in Recital G.

COP means Certificate of Preference and is defined in Section 9.04(f)(i).

COP Enhanced Outreach Strategies is defined in 9.04(f)(ii) and Attachment 26.

Core Benefits is defined in Section 10.01.

DBI means the City's Department of Building Inspection and is defined in Section 4.08(b).

DCDG is defined in Recital C.

Declaration of Affordability Restrictions is defined in Section 9.04(a), and collectively or individually, as applicable, references the Declaration of Affordability Restrictions (Tower) in the form attached as Attachment 19A and the Declaration of Affordability Restrictions (Mid-Rise) in the form attached as Attachment 19B.

Declaration of Restrictions for Community Commercial Space is defined in Section 9.09(c).

Declaration of Site Restrictions is defined in Section 2.04(f) and substantially in the form of Attachment 11.

Delay Fees is defined in Section 9.12.

Delayed Party is defined in Section 8.08(a)(i).

Delay of Construction CBD Fee is defined in Section 9.03(a)(ii).

Delay of Construction CFD Fee is defined in Section 9.03(b)(iii)

Delay of Construction Tax Increment Fee is defined in Section 4.11(a).

Developer means F4 Transbay Partners LLC, a Delaware limited liability company.

Developers means both Developer and Affordable Developer.

Developer Affiliate is defined in Section 6.02(a).

Developer Conditions are defined in Section 2.07(a).

Developer's Quitclaim Deed is defined in Section 8.03(a)(ii).

Development Controls is defined in Recital C.

Development Controls Amendment is defined in Recital T.

Development Program is attached as Attachment 5 and defined in Recital W.

District Management Plan is defined in Section 9.03(a)(ii).

DOC (or **Determination of Completeness**) is defined in Section 4.13(a).

DOF means the State of California Department of Finance and is defined in Recital I.

DRDAP means the Design Review and Document Approvals as defined in Section 4.03(c) and set forth in Attachment 15.

DRE means the California Department of Real Estate and is defined in Section 9.11(a).

Effective Date is defined in Section 12.17.

Environmental Law is defined in Section 3.02(c).

Equal Opportunity Program is defined in Article 10 and set forth in Attachment 17.

Escrow is defined in Section 2.02.

Estimated Tax is defined in Section 4.11(b).

Estimation Process is defined in Section 4.11(b).

Event of Default is defined in Section 8.01 (with respect to Developer) and Section 8.02 (with respect to Affordable Developer).

Evidence of Financing and Project Commitments is defined in Section 2.08.

Exterior is defined in Section 5.07.

Financing Commitment is defined in Section 2.08(d).

Financing Plan is defined in Section 2.08(b).

First Extended Closing Date is defined in Section 8.08(b)(i).

Force Majeure is defined in Section 8.08(a)(i).

Former Agency means the Redevelopment Agency of the City and County of San Francisco and is defined in Recital A.

Good Faith Deposit is defined in Section 1.02.

Grant Deed is defined in Section 2.04(e), the form of which is shown in Attachment 10.

Hazardous Substance is defined in Section 3.02(c).

Hazardous Materials Indemnified Party(ies) is defined in Section 3.02(a).

HCAP means the Health Care Accountability Policy as defined in Section 10.02(a) and set forth in Attachment 17.

HCD is defined in Section 9.09(b).

Implementation Agreement means the Transbay Redevelopment Project Implementation Agreement as further defined in Recital G.

Improvements are generally described in Recital U and more particularly defined by Attachment 4, Scope of Development.

Inclusionary Manual means the MOHCD Inclusionary Affordable Housing Program Monitoring and Procedures Manual, as amended from time to time (or, if in the future the Inclusionary Manual is no longer published, an equivalent policy document).

Indemnified Parties is defined in Section 11.01.

LEED is defined in Recital W.

MCP means Minimum Compensation Policy as defined in Section 10.02(a) and set forth in Attachment 17.

Mentoring Program is defined in Section 10.05(a).

Mercy is the Affordable Developer.

Mid-Rise Affordable Project is generally described in Recital U and more particularly defined in Attachment 4, Scope of Development.

MMRP is defined in Section 9.02.

MOHCD means the Mayor's Office of Housing and Community Development and is defined in Recital X.

Mortgage is defined in Section **Error! Reference source not found.**.

Mortgagee is defined in Section **Error! Reference source not found.**.

Net Tax Increment is defined in Recital J.

Neutral Expert is defined in Section 4.11(b)(ii).

Official Records means the Office of the Recorder of the City and County of San Francisco and is defined in Recital B.

Outside Date for Close of Escrow is defined in Section 2.03(b) and specified in Attachment 7, Schedule of Performance.

Parcel F is defined in Recital P.

Parcel F PSA is defined in Recital P.

Parties means the Successor Agency, the Developer, and the Affordable Developer.

Party Experts is defined in Section 4.11(b)(ii).

PCBs is defined in Section 3.02(c).

Permanent Subdivision of the Site is defined in Recital W.

Permit to Enter is defined in Section 2.06(b).

PIA means public improvement agreement and is defined in Recital Y.

Plan Amendment is defined in Recital T.

Pledge Agreement is defined in Recital E.

PMP means the Successor Agency's Long-Range Property Management Plan and is defined in Recital BB.

Policies means the MCP and HCAP and is defined in Section 10.02(a).

Project is defined in Section 4.13(c).

Project Approval Documents are defined in Attachment 15, DRDAP.

Project Area is defined in Recital A and means the Transbay Redevelopment Project Area.

Project Area Declaration of Restrictions is defined in Recital D.

Project Open Space means all portions of open space provided within the Tower Project or the Mid-Rise Affordable Project.

Public Benefit Use is defined in Section 9.09(a) and the MOHCD Commercial Space Underwriting Guidelines Attachment 27.

Public Open Space is defined in Attachment 4, Scope of Development Section I.D.

Purchase Price is defined in Section 1.01(a).

Qualified Replacement Development Manager is defined in Section 6.02(b)(i).

Reciprocal Easement Agreement or **REA** is defined in Section 9.11(b).

Redevelopment Dissolution Law means AB 26 and AB 1414, as amended from time to time, and is defined in Recital H.

Redevelopment Plan is defined in Recital B.

Redevelopment Requirements are defined in Section 4.04.

Regulatory Agency is defined in Section 4.11.

Release is defined in Section 3.01(d).

Residential Condominium Unit means an individual residential condominium unit or townhouse created within the Tower Market-Rate Condominium Project.

RMA means the CFD Rate and Method of Apportionment as defined in Section 9.03(b)(i) and set forth in Attachment 22.

Schedule of Important Project Dates is attached as Attachment 6. Whenever used in this Agreement, "Schedule of Important Project Dates" shall mean the date(s) specified in the Schedule of Important Project Dates attached hereto as of the Effective Date *plus* any applicable extensions provided in accordance with the provisions of this Agreement (per Section 12.02).

Schedule of Performance is attached as Attachment 7. Whenever used in this Agreement, 'Schedule of Performance' shall mean the date(s) specified in the Schedule of Performance attached hereto as of the Effective Date *plus* any applicable extensions provided in accordance with the provisions of this Agreement (per Section 12.02).

Schematic Design Documents is defined in Section 2.07(a)(vi)

Scope of Development is defined in Recital U and attached as Attachment 4.

Shared Parking Garage has the meaning set out in Recital U

Site is defined in Recital M.

Site Legal Description is attached as Attachment 2.

State means the State of California and is defined in Recital E.

Streetscape Improvements are defined in the Scope of Development.

Streetscape Plan means the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan.

Successor Agency means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California.

Successor Agency Approval is defined in Section 6.02(a).

Successor Agency Conditions are defined in Section 2.07(b).

Successor Agency Costs is defined in Section 12.01.

Successor Agency Loan is defined in Section 9.05(b).

Successor Agency Power of Termination is defined in Section 8.03(a)(ii).

TIFIA is defined in Recital J.

TIFIA Loan is defined in Recital J.

TJPA means the Transbay Joint Powers Authority and is defined in Recital E.

TJPA Bonds is defined in Recital J.

TJPA Bonds Final Maturity Date is defined in Section 5.09(c).

Tehama Parcel is defined in Recital M**.**

Tehama Street Public Improvements is defined in Section 9.06(a)

Temporary C of O is defined in Section 9.01.

Temporary Terminal is defined in Recital L.

Term is defined in Section 1.04.

Title Company is defined in Section 2.02.

Title Policy is defined in Section 2.04.

Tehama Street Public Improvements is defined in Section 9.06(a).

Tower Market-Rate Condominium Project is generally described in Recital U and more particularly defined in Attachment 4, Scope of Development.

Tower Mixed-Income Rental Project is generally described in Recital U and more particularly defined in Attachment 4, Scope of Development.

Tower Project means the Tower Market-Rate Condominium Project and the Tower Mixed-Income Rental Project.

Townhouses are defined in Attachment 4, Scope of Development.

Transbay Affordable Housing Obligation is defined in Recital F.

Transbay Final and Conclusive Determination is attached as Attachment 1.

Transfer is defined in Section 6.02(a).

Transfer Payment is defined in Section 9.10(a).

Transfer Payment Covenant and Notice is defined in Section 9.10(a).

Transit Center is defined in Recital L.

Warm Shell is defined in Attachment 27.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Authorized by Successor Agency Resolution No. ___-2022, adopted _____, 2022.

AGENCY:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California

By: _____
Thurston Kaslofsky
Executive Director

APPROVED AS TO FORM:

By: _____
James B. Morales
General Agency Counsel

DEVELOPER:

F4 TRANSBAY PARTNERS LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

AFFORDABLE DEVELOPER:

TRANSBAY BLOCK 4 HOUSING PARTNERSHIP, L.P., a California limited partnership

BY: _____
NAME: _____
ITS: _____

MOHCD ACKNOWLEDGEMENT:

MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

By: _____
Eric Shaw
Director

Attachments to Exhibit A (DDA) to Resolution No. 22-2022
Meeting of June 21, 2022

Attachment 1:	Transbay Final and Conclusive Determination
Attachment 2:	Site Legal Description
Attachment 3:	Tehama Parcel Legal Description
Attachment 4:	Scope of Development
Attachment 5:	Development Component Diagram
Attachment 6:	Schedule of Important Project Dates
Attachment 7:	Schedule of Performance
Attachment 8:	Approved Title Conditions
Attachment 9:	Form of Owner's Affidavit
Attachment 10:	Form of Grant Deed
Attachment 11:	Form of Declaration of Site Restrictions
Attachment 12:	Form of Air Rights Lease
Attachment 13:	Permit to Enter
Attachment 14:	Form of Developer's Quitclaim Deed
Attachment 15:	Design Review and Document Approval Procedure
Attachment 16:	Form of Certificate of Completion
Attachment 17:	Successor Agency Equal Opportunity Program (EOP)
Attachment 18:	Insurance Requirements
Attachment 19A:	Form of Declaration of Affordable Restrictions_TOWER
Attachment 19B:	Form of Declaration of Affordable Restrictions_MID-RISE
Attachment 20:	Form of Declaration and Agreement Imposing Transfer Fee and Covenant Lien
Attachment 20A:	Form Notice of Transfer Payment Covenant
Attachment 21:	Mitigation Measures
Attachment 22:	Rate and Method of Apportionment
Attachment 23:	Tower Mixed Income Project Affordable Housing Unit Distribution

Attachment 24:	Comparability of Affordable Housing
Attachment 25A-D:	Marketing Obligations
Attachment 25A:	Marketing Obligations_Early Outreach Plan
Attachment 25-B:	Marketing Obligations_Marketing Plan Template_Mid-Rise
Attachment 25C:	Marketing Obligations_Marketing Plan - Tower BMRs
Attachment 25D:	Marketing Obligations_Operational Rules for SF Housing Lotteries
Attachment 26:	COP Enhanced Outreach Strategies
Attachment 27:	MOHCD Commercial Underwriting Guidelines
Attachment 28:	Form of Declaration of Restrictions Community Commercial Space
Attachment 29:	Form of Declaration of Open Space Restrictions and Covenant to Maintain