

AGREEMENT FOR DEDICATION OF REAL ESTATE

by and between
598 BRANNAN STREET PHASE 1, L.L.C.,
as Owner

and

CITY AND COUNTY OF SAN FRANCISCO,
as Transferee

For the conveyance of

160 Freelon Street
San Francisco, California

[_____], 2023

LIST OF EXHIBITS

- EXHIBIT A – Real Property Description
- EXHIBIT B – Grant Deed
- EXHIBIT C – [Intentionally Omitted]
- EXHIBIT D – Certificate of Transferor Other Than an Individual (FIRPTA Affidavit)
- EXHIBIT E – Accepted Title Encumbrances

AGREEMENT FOR DEDICATION OF REAL ESTATE

(160 Freelon Street, San Francisco)

THIS AGREEMENT FOR DEDICATION OF REAL ESTATE (this “**Agreement**”) dated for reference purposes only as of [____], 2023 (“**Reference Date**”) is by and between 598 BRANNAN STREET PHASE 1, L.L.C., a Delaware limited liability company (“**Owner**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”).

RECITALS

This Agreement is made with reference to the following:

- A. Owner is the owner of a mixed-use project located at 639, 645, 649-651 Bryant Street and 590 & 598 Brannan Street in San Francisco, California (the “**Principal Site**”).
- B. On June 6, 2019, pursuant to Planning Commission Motion No. 2012.0640B/ENX, the San Francisco Planning Commission approved the Owner’s development application to construct on the Principal Site three 150-185-foot-tall, 10-to-13 story, mixed-use office buildings in two phases (“**Principal Project**”). The first phase will involve the construction of two mixed-use buildings with 711,136 square feet of office use, 37,527 square feet of Production, Distribution and Repair (“**PDR**”) space, 11,890 square feet of neighborhood serving retail, 16,505 square feet of Privately-Owned Public Open Space (“**POPOS**”), sidewalk and alley improvements, and construction of a new signalized crosswalk on 5th Street. The second phase will involve the construction of a mixed-use office building with 211,601 square feet of office space, 11,054 square feet of PDR space, a 5,546 square foot childcare facility, 2,831 square feet of POPOS, and sidewalk and alley improvements. As of the Reference Date, the first phase also includes land dedication to the City for a 1-acre public park (the “**Public Park**”) and the second phase includes the subsequent development of the Public Park, each in connection with Planning Commission Resolution No. 20461 approving a development impact fee waiver pursuant to an Agreement to Waive Development Impact Fees in Return for Conveyance of Park Land (Per Article 4 of the Planning Code) (“**Waiver Agreement**”). As of the Reference Date, the Waiver Agreement has not yet been finalized or executed, and requires City Board of Supervisors approval before it can become effective. In connection with any changes to the Principal Project, Owner and City Planning Department may further negotiate and revise the Waiver Agreement as needed, and seek all necessary City approvals for such Waiver Agreement, including but not limited to approval by the City’s Board of Supervisors.
- C. The San Francisco Planning Code (“**Planning Code**”) requires commercial projects to comply with certain housing requirements set forth in the Jobs-Housing Linkage Program to create affordable housing in San Francisco (“**Affordability Requirement**”). Development projects within the Central SOMA Special Use District may satisfy all or a portion of the Affordability Requirements by dedication of land to the City for the purpose of constructing affordable housing. Owner desires to satisfy a portion of the Affordability Requirement for the Principal Project through a land dedication pursuant to Planning Code Section 249.78(e)(2)(B) (“**Land Dedication Option**”).
- D. Owner and City are entering into this Agreement in order to facilitate satisfaction of the Affordability Requirement for the Principal Project under the Land Dedication Option through a transfer to the City of the Property (as defined below).
- E. By a letter dated May 20, 2019 (the “**May 2019 Letter**”) from the Mayor’s Office of Housing and Community Development (“**MOHCD**”), the City verified the Property as acceptable for

dedication pursuant to the Land Dedication Option described above, subject to satisfaction of certain conditions set forth therein.

- F. The Land is currently subject to a subdivision process and constitutes a portion of the real property located in the City and County of San Francisco, commonly known as 639 Bryant Street, which Owner acquired from City on April 30, 2020.

IN CONSIDERATION of the payment of the non-refundable sum of One Dollar (\$1.00) by City, the receipt of which is hereby acknowledged by Owner, and the respective agreements contained hereinbelow, Owner and City agree as follows:

1. PROPERTY TO BE CONVEYED

1.1 Property Included in Conveyance

Owner agrees to convey to City, and City agrees to accept from Owner, subject to the terms, covenants and conditions hereinafter set forth, any and all of Owner's right, title and interest in and to the following:

(a) the real property consisting of approximately 0.30 acres of land, located in the City and County of San Francisco, commonly known as 160 Freelon Street and more particularly depicted as Parcel C on Exhibit A attached hereto (the "**Land**");

(b) all fixtures located on the Land, including, without limitation, all apparatus, equipment and appliances used in connection with the operation of the Land (collectively, the "**Fixtures**"); and

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

All of the items referred to in Subsections (a), (b), and (c) above are collectively referred to as the "Property."

2. CONSIDERATION

2.1 Land Value

As required by San Francisco Planning Code Section 413.6, the value of the Property has been determined by the City's Director of Property to be Thirteen Million Nine Hundred Eighty Thousand Two Hundred Sixty-Five and 25/100 Dollars (\$13,980,265.25) (the "**Land Value**").

2.2 Funds

All payments contemplated to be made by any party hereto shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds to Title Company (as defined in Section 3.2), as escrow agent.

3. TITLE TO THE PROPERTY

3.1 Conveyance of Title to the Property

At the Closing, Owner shall convey to City, or its nominee, marketable and insurable fee simple title to the Land and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit B (the “**Deed**”), subject to the Accepted Conditions of Title (as defined in Section 3.2 [Title Insurance]) and the Survey (as defined in Section 3.3 [Survey]).

3.2 Title Insurance

Delivery of title at Closing in accordance with the preceding Section shall be evidenced by the commitment of Chicago Title Insurance Company, located at One Embarcadero Center, Suite 250, San Francisco, CA 94111 (the “**Title Company**”), to issue to City an ALTA extended coverage owner's policy of title insurance (Form ALTA 2006 – updated 6/17/2006) (the “**Title Policy**”) in the amount of the Land Value insuring fee simple title to the Land, and the Appurtenances in City free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, rights of tenants or other occupants, and subject only to the Accepted Conditions of Title pursuant to Section 5.1(a) below. The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property during the Owner's period of ownership of the Land, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property and such other endorsements as City may reasonably request.

3.3 Survey

Owner shall deliver to City an ALTA Survey of the Land (the “**Survey**”) within ten (10) business days of satisfaction of the Subdivision Condition (as defined below). By written notice to Owner, City shall have fifteen (15) days following the City's receipt of the Survey to object to any matter contained therein (each, a “**Survey Objection**”). If City provides a timely Survey Objection, Owner shall work in good faith to cure such Survey Objection as soon as reasonably practicable thereafter and the Closing shall be extended accordingly to allow for such cure.

3.4 Environmental Site Assessments

ENVIRON International Corporation conducted a Phase I Environmental Site Assessment of the Property (“**2015 Phase I Report**”), Project No. 04-16129P, dated on February 2, 2015, in order to evaluate potential environmental conditions at the Property. Prior to the Closing Date Owner shall deliver to the City either a new Phase I Environmental Site Assessment or an update to the 2015 Phase I Report, certified to City as an intended user who may rely on the assessment (in either case, the “**Phase I**”) and, if and to the extent recommended by or reasonably necessary as a result of the findings of the Phase I, a Phase II Environmental Site Assessment of the Land certified to City as an intended user who may rely on the assessment (the “**Phase II**”); provided, however, that the scope and extent of any invasive testing shall be subject to Owner's reasonable consent and discretion. If City performs invasive testing, then City shall restore the Property to substantially the condition it was found before such testing, subject to applicable laws.

4. BUYER'S DUE DILIGENCE INVESTIGATIONS

4.1 Due Diligence and Time for Satisfaction of Conditions

Except as provided in Section 3.4 above, City acknowledges that City has been given the opportunity to investigate the Property, either independently or through agents of City's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City's intended uses. Except as provided in Section 3.4 above, City and its Agents may continue non-invasive due diligence investigations on the Property on or after the Effective Date under the terms of this Agreement. Owner has delivered to City the following documents: Site Survey, Geotechnical Report, Phase I Report, Analytical Report dated December 29, 2014 from McCampell Analytical, Inc. (the "**Analytical Report**"), Memorandum dated April 8, 2019 from Ramboll (together with the 2015 Phase I and the Analytical Report, the "**Environmental Materials**"), Land Use Memo re: Existing Zoning, Occupancy and Use Restrictions, Density Study [598 Brannan Entitlement Plan Set (12/21/18) and Revisions (5/3/19)], and Cost Study/Hard Cost Estimate and email revision regarding environmental remediation received October 8, 2019. Not later than five (5) business days after the Effective Date, Owner will deliver to City any other inspection reports by Owner's engineers, soils and geotechnical reports by Owner's engineers, and any other contracts or documents of significance to the Property, in each case, produced on behalf of Owner during Owner's period of ownership to the extent such documents exist and are either in the possession or control of Owner, or may be obtained by Owner through the exercise of commercially reasonable efforts (the documents and information in the prior two sentences, collectively, the "**Documents**").

4.2 As-Is Condition of Property; Release of Owner

As provided in this Agreement and the May 2019 Letter, it is the intent of Owner and City that, by the Closing Date, City will have had the opportunity to perform a diligent and thorough inspection and investigation of the Property, either independently or through its Agents. CITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT OWNER IS CONVEYING AND CITY IS ACQUIRING OWNER'S INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. CITY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF OWNER EXPRESSLY SET FORTH IN THIS AGREEMENT, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM OWNER OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, THE SUITABILITY FOR CITY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 [REPRESENTATIONS AND WARRANTIES OF OWNER] BELOW, OWNER DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE PROPERTY, OR THE SUITABILITY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS CITY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS RELATING TO THE PROPERTY

AND THE USES TO WHICH IT MAY BE PUT.

As part of its agreement to accept the Property and in its “as is and with all faults” condition, City as of the Closing Date, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, Owner and its Agents, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, or foreseen or unforeseen, that may arise on account of or in any way be connected with (a) the use of the Property by City and its successors and assigns or (b) the physical, geological, or environmental condition of the Property. “Losses” means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including attorneys’ fees and costs. In connection with the foregoing release, City, as of the Closing Date, expressly waives the benefits of Section 1542 of the California Civil Code, which provides 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.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING PROVISIONS OF THIS SECTION 4.2 SHALL NOT SERVE TO RELEASE OWNER AND ITS AGENTS FROM, AND NO RELEASE IN THIS SECTION 4.2 APPLIES TO, AND CITY EXPRESSLY DOES NOT WAIVE (A) OWNER’S OR ITS AGENT’S INTENTIONAL MISREPRESENTATION OR OMISSION OR FRAUD, (B) ANY MATERIAL BREACH OF ANY COVENANT, REPRESENTATION, OR WARRANTY MADE BY OWNER UNDER THIS AGREEMENT, OR (C) WITH RESPECT TO ANY CLAIM MADE BY ANY THIRD PARTY AGAINST CITY WITH RESPECT TO THE PROPERTY ARISING DURING OWNER’S OWNERSHIP OF THE PROPERTY, EXCEPT AS AND TO THE EXTENT CAUSED BY CITY.

By placing its initials below, City specifically acknowledges and confirms the validity of the releases made above and the fact that City was represented by counsel who explained, at the time of this Agreement was made, the consequences of the above releases. The provisions of this Section 4.2 shall survive the Closing.

INITIALS: City: _____

5. ENTRY AND CONDITIONS TO CLOSING

5.1 Entry

At all times prior to the Closing Date, Owner shall afford City and its Agents reasonable access to the Property upon reasonable prior notice for the purposes of satisfying City with respect to the representations, warranties, and covenants of Owner contained herein and the satisfaction of the City's Conditions Precedent.

5.2 City's Conditions to Closing

The following are conditions precedent to City's obligation to accept the Property (collectively, "**City's Conditions Precedent**"):

(a) City shall have reviewed and approved title to the Property, as follows:

(i) Within five (5) business days of satisfaction of the Subdivision Condition (as defined below), Owner shall deliver to City a current preliminary report on the Property, issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "**Preliminary Report**");

(ii) Within the period referred to in clause (i) above, Owner shall deliver to City copies of any existing or proposed easements, covenants, restrictions, agreements or other documents in Owner's possession or control that affect title to or encumber the Property, and are not disclosed by the Preliminary Report; and

(iii) Within ten (10) business days of satisfaction of the Subdivision Condition (as defined below), Owner has provided the Survey and any Survey Objections have been resolved to City's reasonable satisfaction pursuant to Section 3.3 above.

(iv) City shall advise Owner what exceptions to title, if any, City is willing to accept (the "**Accepted Conditions of Title**"). Owner shall have twenty (20) days after receipt of City's notice of any objections to title to give City: (A) evidence satisfactory to City of the removal of all objectionable exceptions from title or that such exceptions will be removed or cured on or before the Closing; or (B) notice that Owner elects not to cause such exceptions to be removed. If Owner gives notice under clause (B), City shall have ten (10) business days to elect to proceed with the acquisition or terminate this Agreement. If City fails to give Owner notice of its election within such ten (10) business days, City shall be deemed to have elected to terminate this Agreement. If Owner gives notice pursuant to clause (A) and fails to remove any such objectionable exceptions from title prior to the Closing Date, and City is unwilling to take title subject thereto, then this Agreement shall terminate and the parties shall have no further obligations under this Agreement except as expressly stated in this Agreement. Notwithstanding the provisions of this Section 5.2(a) to the contrary, any title encumbrances identified on Exhibit E attached hereto will be Accepted Conditions of Title.

(b) City's review and approval of the physical and environmental conditions of the Property pursuant to this Agreement.

(c) MOHCD's review and approval of a passenger drop off sequence plan on Freelon Street (which such approval may be by email confirmation to Owner).

(d) [Intentionally Omitted].

(e) City's review and approval of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(f) City's review and approval of the Documents.

(g) Owner shall not be in default in the performance of any covenant or agreement to be performed by Owner under this Agreement, and all of Owner's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date. At the Closing, Owner shall deliver to City a certificate certifying that each of Owner's representations and warranties contained in Section 8.1 [Representations and Warranties of Owner] below are true and correct as of the Closing Date.

(h) The physical condition of the Property shall be substantially the same on the Closing Date as on the Reference Date, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 [Risk of Loss]), and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation, or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(i) Title Company shall be committed at the Closing to issue to City the Title Policy as provided in Section 3.2 [Title Insurance].

(j) Owner shall have delivered the items described in Section 6.3 [Owner's Delivery of Documents] below on or before the Closing.

(k) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 6.6 below).

(l) After satisfaction of the Subdivision Condition (as defined below), the City Surveyor has approved the legal description of the Land and Appurtenances.

(m) The final parcel map subdividing the Land from the Principal Site shall have been recorded in the Official Records of the County of San Francisco (the “**Subdivision Condition**”).

(n) The City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the Closing (the “**Approval Resolution Condition**”).

5.3 Failure of City's Conditions to Closing

(a) The City's Conditions Precedent are solely for the benefit of City. If any City's Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the City's Condition Precedent in question and proceed with the acquisition or, in the alternative, terminate this Agreement, provided that the City's Conditions Precedent described above subsections (i) [Title Policy], (l) [City surveyor approval], and (n) [Board and Mayoral approval] may not be waived. The waiver of any City's Condition Precedent shall not relieve Owner of any liability or obligation with respect to any representation, warranty, covenant, or agreement of Owner expressly provided for under this Agreement. If City has not approved or waived in writing all of the waivable City's Conditions Precedent, then the Closing Date (defined below) shall be automatically extended until either (y) the earlier of the date the City has approved or waived such City's Conditions Precedent and thirty (30) days after the scheduled Closing Date, or (z) such other date as mutually agreed upon by City and Owner.

(b) If the conveyance of the Property is not consummated because of a default under this Agreement on the part of Owner or if a City's Condition Precedent cannot be fulfilled because Owner frustrated such fulfillment by some affirmative act or negligent omission, provided that City first makes written demand for performance and Owner fails to comply with such written demand within thirty (30) days after receipt of such notice, City may, at its sole election, either (1) elect to waive such default or failure of City's Condition Precedent and proceed to Closing, (2) terminate this Agreement by delivery of notice of termination to Owner, whereupon Owner shall pay to City any title, escrow, legal and inspection fees incurred by City in connection with the performance of its due diligence review of the Property, and neither party shall have any further rights or obligations hereunder, or (3) continue this Agreement pending City's action for specific performance. If City becomes aware of a default by Owner under this Agreement before the Closing Date and elects to proceed with the Closing, then City shall be deemed to have waived such default.

5.4 Owner's Conditions to Closing

The following are conditions precedent to Owner's obligation to convey the Property to City (collectively, "**Owner's Conditions Precedent**"):

(a) City Planning Department shall have provided written confirmation that the City Planning Department has reduced the amount of Owner's Affordability Requirement for the Principal Project by an amount equal to the difference between (i) the Land Value less (ii) Four Hundred Seventy Eight Thousand Six Hundred Eighty Eight Dollars and 00/100 (\$478,688.00) (which amount represents City's expense to remediate certain conditions with respect to the Property identified in the 2015 Phase I and 2021 Phase 2 Investigation Report).

(b) City shall not be in default in the performance of any covenant or agreement to be performed by City under this Agreement, and all of City's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

(c) City shall have delivered the items described in Section 6.4 below [City's Delivery of Documents] on or before the Closing.

(d) The Approval Resolution Condition shall have been met.

(e) The Subdivision Condition shall have been met.

(f) If the City requests in writing a Closing earlier than required by Owner under Planning Code Section 249.78(e)(2)(B) and Section IV(F)(4) of MOHCD's 2018 Inclusionary Affordable Housing Program Monitoring and Procedures Manual, as may be amended ("Procedures Manual"), then Owner shall approve of such earlier Closing upon satisfaction of the following: (1) City Planning Department and Owner will have finalized and executed the Waiver Agreement in form and substance mutually acceptable to City Planning Department and Owner, including any mutually acceptable revisions, and have received all applicable City approvals necessary for such Waiver Agreement, including but not limited to the approval of the Board of Supervisors (the "Waiver Approvals"), and (2) each Owner's Condition Precedent will have been met. Notwithstanding the foregoing, if the Waiver Approvals have not been received prior to issuance of the First Construction Document (as defined by Planning Code Section 401) for the Principal Project, then this subclause (f) will be automatically waived and will not be a condition to Closing, in order to comply with Planning Code Section 249.78(e)(2)(B) and Section IV(F)(4) of the Procedures Manual; provided, however, and solely for the avoidance of doubt, each other Owner's Condition Precedent and City's Conditions Precedent shall still be conditions to Closing.

5.5 Failure of Owner's Conditions to Closing

(a) The Owner's Conditions Precedent contained in Section 5.4 are solely for the benefit of Owner. If any Owner's Condition Precedent is not satisfied, Owner shall have the right in its sole discretion either to waive in writing the Owner's Condition Precedent in question and proceed with the conveyance or, in the alternative, terminate this Agreement. If Owner shall not have approved or waived in writing all of the Owner's Conditions Precedent, then the Closing Date (defined below) shall be automatically extended until either (y) the earlier of the date the Owner has approved or waived such Owner's Conditions Precedent or thirty (30) days after the scheduled Closing Date, or (z) such other date as mutually agreed upon by City and Owner.

(b) If the conveyance of the Property is not consummated because of a default under this Agreement on the part of City or if an Owner's Condition Precedent cannot be fulfilled because City frustrated such fulfillment by some affirmative act or negligent omission, provided that Owner first makes written demand for performance and City fails to comply with such written demand within thirty (30) days after receipt of such notice, Owner may, at its sole election, either (1) elect to waive such default or failure of Owner's Condition Precedent and proceed to Closing, (2) terminate this Agreement by delivery of notice of termination to City, whereupon City shall pay to Owner any title, escrow, and legal fees incurred by Owner in connection with this Agreement, and neither party shall have any further rights or obligations hereunder, or (3) continue this Agreement pending Owner's action for specific performance. If Owner becomes aware of a default by City under this Agreement before the Closing Date and elects to proceed with the Closing, then Owner shall be deemed to have waived such default.

5.6 Cooperation

(a) Owner shall cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any City's Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Owner's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any City's Condition Precedent. Owner authorizes City and its Agents to make all inquiries with any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations, provided, however, that City provides Owner with reasonable advanced notice of any such inquiries and Owner, in Owner's discretion, may participate in the same.

(b) City shall cooperate with Owner and do all acts as may be reasonably requested by Owner and appropriate to be taken by City acting in its proprietary capacity with regard to the fulfillment of any Owner's Conditions Precedent including, without limitation, execution of any documents, applications, or permits.

6. ESCROW AND CLOSING

6.1 Opening of Escrow

On or before the Effective Date (as defined in Article 11 [General Provisions]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the conveyance contemplated hereby. Owner and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

6.2 Closing Date

The consummation of the conveyance contemplated under this Agreement (the "**Closing**") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made through Title Company, on the date that is thirty (30) calendar days after the later of (a) the date that the Subdivision Condition is satisfied and (b) the date that the Approval Resolution Condition is satisfied, or on such earlier date as City and Owner may mutually agree (the "**Closing Date**"), subject to the provisions of Article 5 [Conditions Precedent]. The Closing Date may not be extended without the prior written approval of both Owner and City, except as otherwise expressly provided in this Agreement. In the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close.

6.3 Owner's Delivery of Documents

At or before the Closing, Owner shall deliver to City through escrow, the following:

- (a) a duly executed and acknowledged Deed;

(b) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit D, and on which City is entitled to rely, that Owner is not a “foreign person” within the meaning of Section 1445(f)(3) of the Federal Tax Code;

(c) a properly executed California Franchise Tax Board Form 593 certifying that Owner is exempt from the withholding requirements of Section 18662 of the State Tax Code;

(d) such resolutions, authorizations, or other partnership documents or agreements relating to Owner and its partners as the Title Company may reasonably require to demonstrate the authority of Owner to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Owner to act for and bind Owner;

(e) closing statement in form and content satisfactory to City and Owner;

(f) the duly executed certificate regarding the accuracy of Owner's representations and warranties as required by Section 5.1(d) hereof; and

6.4 City's Delivery of Documents and Funds

At or before the Closing, City shall deliver to Owner through escrow the following:

(a) a certificate of acceptance of the Deed executed by City's Director of Property.

6.5 Other Documents

Owner and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the conveyance of the Property in accordance with the terms hereof.

6.6 Title Company as Real Estate Reporting Person

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

7. EXPENSES AND TAXES

7.1 Apportionments

Annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for other normal Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

7.2 Closing Costs

Owner shall pay the premium for the Title Policy and the cost of the endorsements thereto. City shall pay any recording fees. Owner shall pay the cost of any transfer taxes applicable to the conveyance, if any. Owner shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. Owner will pay all escrow fees. Any other costs and charges of the escrow for the conveyance not otherwise provided for in this Section or elsewhere in this Agreement shall be allocated in accordance with the closing customs for San Francisco County, as determined by Title Company.

7.3 Real Estate Taxes and Special Assessments

General real estate taxes payable for the tax year prior to year of Closing and all prior years shall be paid by Owner at or before the Closing. General real estate taxes payable for the tax year of the Closing shall be prorated through escrow by Owner and City as of the Closing Date. At or before the Closing, Owner shall pay the full amount of any special assessments against the Property, including, without limitation, interest payable thereon, applicable to the period prior the Closing Date.

7.4 Post-Closing Reconciliation

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

7.5 Survival

The provisions of this Section 7 shall survive the Closing.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of Owner

Owner represents and warrants to City as follows:

(a) To Owner's actual knowledge, the Documents furnished to City are all of the material documents and information pertaining to the condition of the Property to the extent available to Owner and related to Owner's period of ownership of the Land.

(b) Owner does not have knowledge of any condemnation with respect to the Property, either instituted or planned to be instituted by any governmental or quasi-governmental

agency other than City, which could detrimentally affect the use, operation or value of the Property.

(c) To Owner's actual knowledge, during the Owner's period of ownership of the Land (i) there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and (ii) except as disclosed on the Preliminary Report, there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property. To Owner's knowledge there are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

(d) Owner has not instituted, nor been served with process with respect to, any pending litigation with respect to the Property and, to Owner's actual knowledge, there is no litigation threatened, against Owner with respect to the Property or any basis therefor.

(e) To Owner's actual knowledge and subject to all matters identified in the Preliminary Report, Owner is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Owner has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

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

(g) Owner has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Owner has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, Owner covenants to immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(h) Owner does not have knowledge of any facts arising during Owner's period of ownership of the Land nor has Owner failed to disclose any fact within Owner's knowledge arising during Owner's period of ownership of the Land that would prevent City from using the Property as contemplated by this Agreement.

(i) To Owner's actual knowledge, except as disclosed in the Environmental Materials, there are not any known Hazardous Materials (defined below) at, on, or in the

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

(j) To Owner's actual knowledge, there are now, and, at the time of Closing will be, no leases or other occupancy agreements affecting any of the Property. Owner has not entered into any leases or other occupancy agreements during its period of ownership of the Property. Owner shall cause to be discharged all mechanics' or materialmen's liens arising during Owner's period of Ownership from any labor or materials furnished to the Property prior to the time of Closing, except for any lien arising from any labor or materials furnished to the Property on behalf of City. To Owner's actual knowledge, there are no obligations in connection with the Property which will be binding upon City after Closing, except for matters set forth in the Preliminary Report.

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

For the purposes of such representations, the phrases "Owner's knowledge," "Owner's actual knowledge," or "the Owner does not have knowledge" and similar phrases, shall mean, at the time of the applicable representation, the actual knowledge of Carl Shannon, who serves as Owner's Senior Managing Director, and/or Sarah Dennis Phillips. Owner represents and warrants that Carl Shannon and Sarah Dennis Phillips are the persons in the ownership organization who are the most knowledgeable about the Property.

8.2 Indemnity

As the sole and exclusive remedy of City under, arising out of or relating to any warranty or representation made by Owner in this Agreement, Owner, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, (but excluding consequential or punitive damages), up to and including an aggregate amount, inclusive of attorney's fees, of Seven Million Dollars (\$7,000,000.00); provided that such aggregate limit shall not apply to any claim caused by Owner's intentional misrepresentation or fraud. The indemnification provisions of this Section and Owner's representations and warranties set forth herein shall survive beyond the Closing and shall not merge with the Deed, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement, each for a period of one (1) year from the Closing or

termination, as applicable. Any claim by City for indemnification under this Section 8.2, whether known or unknown, or otherwise with respect to Owner's representations and warranties hereunder, shall be void and of no effect unless such claim is validly brought and filed within such applicable one (1) year period.

9. RISK OF LOSS AND POSSESSION

9.1 Risk of Loss

If there is an event occurs or condition that would render the Property unsuitable for housing ("**Casualty**"), as determined by City in its reasonable discretion, or condemnation proceedings are commenced against any of the Property, then the rights and obligations of Owner and City hereunder shall be as follows:

If a material portion of the Property is subject to a Casualty or condemnation proceedings are commenced against any material portion of the Property, then, City shall have the right, at its election, to terminate this Agreement in its entirety. City shall have thirty (30) days after Owner notifies City that an event described in this Section 9.1 has occurred to make such election by delivery to Owner of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety by City's delivery of notice of termination to Owner, then City and Owner shall each be released from all obligations hereunder pertaining to that portion of the Property affected by such termination.

9.2 Possession

Possession of the Property shall be delivered to City on the Closing Date.

10. MAINTENANCE; CONSENT TO NEW CONTRACTS

10.1 Maintenance of the Property by Owner

Between the date of Owner's execution of this Agreement and the Closing, Owner shall maintain the Property in good order, condition and repair, reasonable wear and tear excepted- Owner shall maintain the chain-link fence with a secured opening on the Freelon-Street frontage, in accordance with applicable laws of the City.

10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts

After the date the Director of Property submits legislation for approval by City's Board of Supervisors of this Agreement, unless and until this Agreement is terminated, Owner shall not enter into any lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property, or waive any rights of Owner under any lease or contract. Owner shall terminate prior to the Closing, at no cost or expense to City, any and all agreements affecting the Property.

11. GENERAL PROVISIONS

11.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, on receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2)

days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City:

Eric D. Shaw
Director
Mayor's Office of Housing and Community
Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Fax No.: (415) 701-5501
Email: eric.shaw@sfgov.org

with copy to

Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Real Estate & Finance Team
Re: **160 Freelon Street**
Email: jessie.cassella@sfcityatty.org

And to:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Re: **160 Freelon Street**

Owner:

598 Brannan Street Phase 1, L.L.C.
c/o Tishman Speyer
One Bush Street, Suite 500
San Francisco, California 94104
Attention: Carl D. Shannon
Telephone: (415) 344-6630
E-mail: CShannon@tishmanspeyer.com

With a copy to:

DLA Piper LLP (US)
550 South Hope Street, Suite 2400
Los Angeles, California 90071-2678
Attn: Mitchell Regenstreif, Esq.; and
Steve Rola, Esq.
Telephone: (213) 330-7875; (619) 699-2957
E-mail: mitchell.regenstreif@dlapiper.com;
and steve.rola@us.dlapiper.com

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by email or fax, to the email address or fax number listed above, or such other addresses numbers as may be provided from time to time. However, neither party may give official or binding notice by email or fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of an email or fax copy of the notice. A party's counsel may give notice on behalf of such party.

11.2 Brokers and Finders

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the conveyance contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

11.3 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

11.4 Amendments

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Owner.

11.5 Continuation and Survival of Representations and Warranties

Except as otherwise specifically stated in this Agreement, any and all representations, warranties, covenants, and indemnities of the Parties contained in this Agreement (including in the Exhibits), shall survive the Closing or termination of this Agreement for a period of one (1) year.

11.6 Governing Law

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

11.7 Merger of Prior Agreements

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

11.8 Parties and Their Agents; Approvals

The term "Owner" as used herein shall include the plural as well as the singular. If there is more than one (1) Owner, then the obligations under this Agreement imposed on Owner shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be

made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

11.9 Interpretation of Agreement

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

11.10 Attorneys' Fees

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

11.11 Sunshine Ordinance

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

11.12 Conflicts of Interest

Through its execution of this Agreement, Owner acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of

said provision, and agrees that if Owner becomes aware of any such fact during the term of this Agreement, Owner shall immediately notify the City.

11.13 Notification of Prohibition on Contributions

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

11.14 Non-Liability of Owner Parties, City Officials, Employees and Agents

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Owner, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Owner, its successors and assigns, or for any obligation of City under this Agreement. Notwithstanding anything to the contrary in this Agreement, Owner's liability arising out of or in connection with this Agreement shall be limited to Owner's assets and City shall not look to any property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee or Agent of Owner (collectively, "**Owner Parties**") in seeking either to enforce Owner's obligations or to satisfy a judgment for Owner's failure to perform such obligations and none of the Owner Parties shall be personally liable for the performance of Owner's obligations under this Agreement. In no event shall either party to this Agreement be liable for, and each party, on behalf of itself and, to the extent applicable to such party, its respective officers, employees, elected officials, supervisors, boards, commissions, commissioners, direct or indirect partners, members, managers, shareholders, directors, officers, principals, employees and Agents, hereby waives any claim against the other party for, any indirect or consequential damages, including loss of profits or business opportunity, arising under or in connection with this Agreement. The limitation on Owner's liability set forth in this paragraph shall survive the Closing (and shall not merge with the Deed) or termination of this Agreement.

11.15 Counterparts

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

11.16 Effective Date

As used herein, the term "Effective Date" shall mean the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

11.17 Severability

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

11.18 Public Bathrooms

Owner and City acknowledge and agree that the public bathrooms serving the Public Park component of the Principal Project shall be located on the Principal Site and not on the Land.

11.19 Construction Cooperation

Owner and City will reasonably cooperate with each other to negotiate easements, access agreements, licenses, and other agreements as needed for development and construction activities affecting the Land and Principal Site adjacent to the Land.

11.20 Cooperative Drafting

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, OWNER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY OR OWNER HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT

BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGES]

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

OWNER:

598 BRANNAN STREET PHASE 1, L.L.C.,
a Delaware limited liability company

By: _____

Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Andrico Q. Penick
Director of Property

Date: _____

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

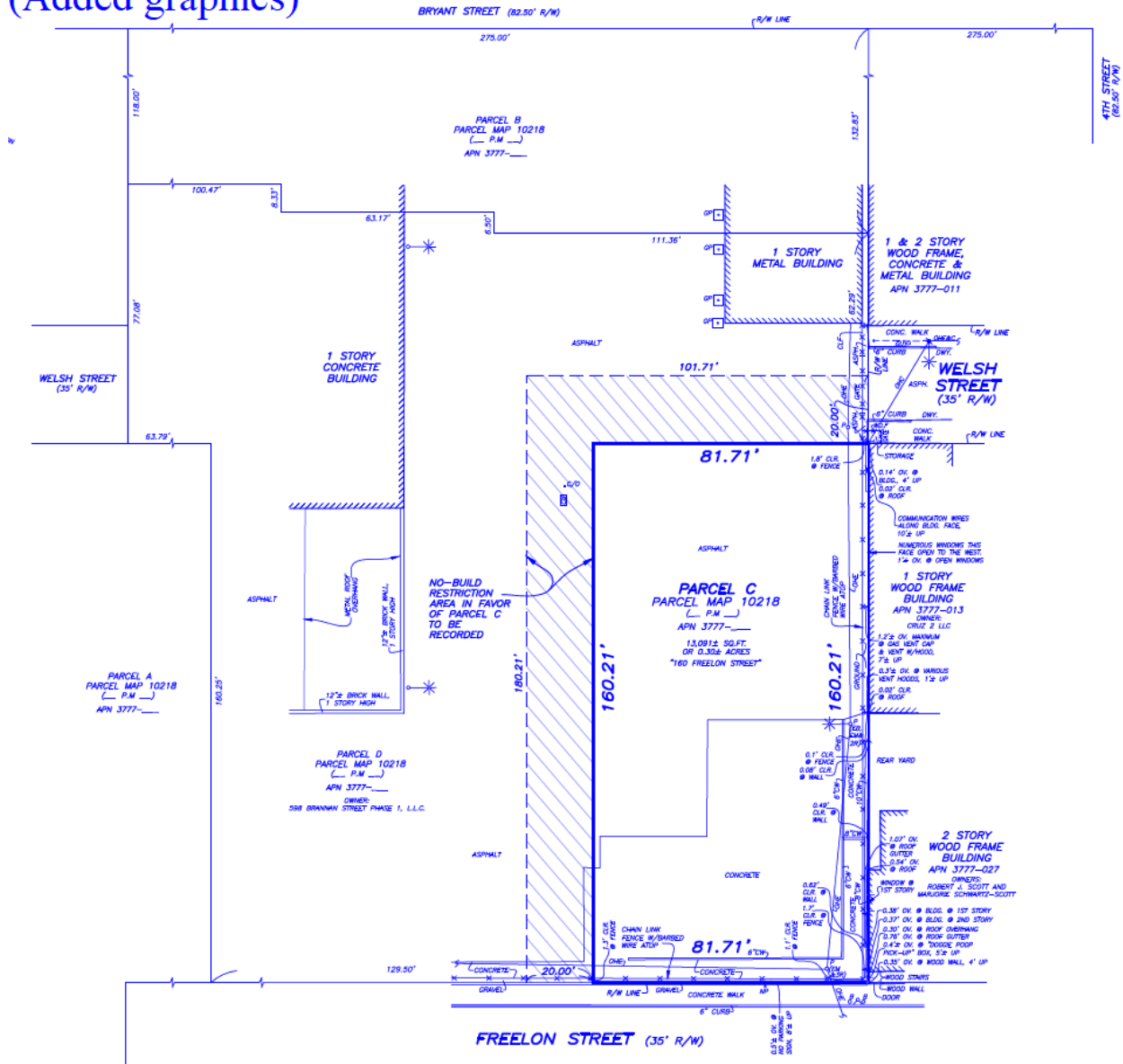
By: _____
Jessica Alfaro-Cassella
Deputy City Attorney

EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the County of San Francisco, State of California, depicted as Parcel C as follows:

(Added graphics)



[metes and bounds legal description attached]

EXHIBIT B
GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

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

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

GRANT DEED

(Assessor's Parcel No. [TO BE INSERTED])

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, 598 BRANNAN STREET PHASE 1, L.L.C., a Delaware limited liability company ("Grantor"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Grantee"), all of Grantor's right, title and interest in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "Property").

TOGETHER WITH any and all rights, privileges, rights-of-way, and easements incidental or appurtenant to the Property, including, but not limited to, any and all mineral rights, development rights, air rights, water, and water rights, relating to the Property, in each case, to the extent of Grantor's interest therein.

[SIGNATURES ON FOLLOWING PAGE]

Executed as of this _____ day of _____, 20____.

GRANTOR:

598 BRANNAN STREET PHASE 1, L.L.C.,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property located at 160 Freelon Street conveyed by the foregoing Grant Deed dated _____ to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. _____ Series of _____, approved _____, and Resolution No. _____, approved _____, 202__, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Andrico Q. Penick
Director of Property

EXHIBIT A to GRANT DEED

Legal Description of Property

[LEGAL DESCRIPTION TO COME FROM PRELIMINARY REPORT]

EXHIBIT C

[Intentionally Omitted]

[to be attached]

EXHIBIT D

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

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

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

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. employer identification number is _____; and

3. Transferor's office address is _____

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

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

Dated: _____, 20____.

On behalf of:

_____,
[NAME]

a _____

By: _____
[NAME]

Its: _____

EXHIBIT E

ACCEPTED TITLE ENCUMBRANCES

1. The Land lies within the boundaries of a Mello Roos Community Facilities District, as follows:

CFD No: 90-1

For: School Facility Repair and Maintenance

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