



**CITY AND COUNTY OF SAN FRANCISCO
MARK FARRELL, MAYOR**

OPTION AGREEMENT

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**88 BROADWAY FAMILY LP,
A CALIFORNIA LIMITED PARTNERSHIP**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

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OPTION AGREEMENT
SEAWALL LOT 322-1/88 BROADWAY

This Option Agreement (“**Agreement**”) dated for references purposes as of April 15, 2018 is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), acting by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”) and 88 Broadway Family LP, a California limited partnership and its permitted successors and assigns hereunder (the “**Optionee**” or “**Developer**” and together with the Port, the “**Parties**”), with reference to the following facts:

RECITALS

This Agreement is made with reference to the following facts and circumstances:

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City’s Charter. The Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element (“**WLUP**”) is Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Most Port property consists of tidelands and submerged lands that are subject to the common law public trust doctrine, the California Constitution, the Burton Act, and the related transfer agreement under which the State of California (the “**State**”) transferred most of the San Francisco waterfront to the City in 1969.

C. Seawall Lot 322-1 (“**SWL 322-1**”) is a rectangular land parcel, assigned AP Lot 007, Block 0140, with frontages on Broadway, Front and Vallejo Streets and is located in the Northeast Waterfront area of the WLUP. SWL 322-1 is also known by its address as “**88 Broadway**” and is more particularly described in *Exhibit A* attached hereto (the “**Property**”). SWL 322-1 is located in the Northeast Waterfront Historic District and is within a C-2 (Community Business) zoning district, Waterfront Special Use District No. 3, and a 65-X Height and Bulk district.

D. The WLUP and the Planning Department’s Northeastern Waterfront Subarea Plan and Northeast Embarcadero Study list hotel, entertainment, theatre and public open space as acceptable uses for the Sea Wall Lots.

E. Port and the San Francisco Mayor’s Office of Housing and Community Development (“**MOHCD**”) have been jointly working to site an affordable housing development on the Property under state legislation (Senate Bill 815 (Chapter 660) (2007); Assembly Bill 2649 (Chapter 757) (2012); and Assembly Bill 2797 (Chapter 529) (2016)) (“**State Legislation**”) that permits lifting Public Trust use restrictions otherwise applicable from the Property to allow development of affordable housing for a 75-year term (“**Project**”). In March 2014, Port and MOHCD executed a Memorandum of Understanding (the “**Predevelopment MOU**”) that sets forth their respective roles and responsibilities with respect to the Project (Port Commission Reso. 14- 16). As contemplated by the Predevelopment MOU, in 2015/2016, MOHCD conducted a competitive solicitation process to select a developer responsible for predevelopment, construction, and operation of the Project. In April 2016, MOHCD awarded the opportunity to a developer-team led by Bridge Housing Corporation (“**BRIDGE**”) and the John Stewart Company (“**JSCo**”) who formed 88 Broadway Family LP (“**Developer**”) to serve as the developer for the Project.

F. On or about July 1, 2017, Port, MOHCD and Optionee entered into an Agreement On Term Sheet And Port Transaction Documents For The Implementation Of 88 Broadway Project On Seawall Lot 322-1 at Broadway and Front Streets, San Francisco to set forth the process, terms, and conditions upon which the parties to that agreement would negotiate terms for the

transaction documents for the pre-development phase and development and operation of the proposed Project (“**Negotiation Agreement**”) including terms for an option agreement and a long-term ground lease with the Port as well as other related agreements and documents to which the Developer and Port are parties, if any. The term of the Negotiation Agreement is coterminous with the term of the Predevelopment MOU.

G. The Project includes developing the Property with up to 120-130 affordable rental family housing units, ground floor retail/commercial space of less than 5,000 square feet each, other ancillary uses and open space consisting of two mid-block passages to allow for neighborhood passage to the Northeast Waterfront and public art (the “**Initial Improvements**”) as further described in the Project Description/Scope of Development attached hereto as **Exhibit B**.

H. Concurrently with its development of the Project, Developer intends to construct or cause construction of an estimated 50 to 55 units of senior housing at 735 Davis Street (“**Davis Street Project**”), which is a property adjacent to the Property and controlled by MOHCD. The Davis Street Project is not subject to the provisions of this Agreement.

I. MOHCD will finance a portion of the development costs of the Project, including pre-development costs pursuant to that certain Loan Agreement dated May 12, 2017 between MOHCD and Developer. MOHCD and Port will enter into another Memorandum of Understanding (the “**Development MOU**”) under which MOHCD will, prior to execution of the ground lease, pay Port the fair market value of the Property as appraised based on its value for its highest and best use without restriction no more than ninety (90) days prior to ground lease execution. In exchange for such fair market value payment, the Port will impose restrictions limiting the Property to affordable housing uses for the term of the ground lease. Rent under the ground lease shall be twenty thousand (\$20,000) per year plus a share of any cash flow generated by any commercial uses, which is the fair market value of the leasehold interest with the affordable housing restrictions imposed. The Development MOU will replace the Predevelopment MOU. Execution of the Development MOU is a condition precedent to the execution of this Agreement and the Development MOU will be presented to the Port Commission and Board of Supervisors for approval at the same time as this Agreement and the form of ground lease and shall be operative concurrently with the ground lease. Given MOHCD’s financial commitments to the Project and because it is the City agency responsible for matters relating to affordable housing, including compliance with laws governing affordable housing, the ground lease will be subject to MOHCD’s consent and MOHCD will assist Port with certain enforcement activities and will have an opportunity to cure certain tenant defaults under the ground lease.

J. Optionee intends to develop the Project with tax-exempt bonds, 4% Low Income Housing Tax Credits, San Francisco Federal Home Loan Bank Affordable Housing Program funding, City financing through MOHCD and other sources, if necessary.

K. As of the Effective Date, City has been advised that State Legislation can be read as placing certain restrictions on uses of the Property other than certain types of housing units (AB 2649; § 5). The City is currently seeking legislation, which would not become operative until January 1, 2019 at the soonest, to explicitly exempt from the restrictions other types of housing units and uses ancillary to the provision of affordable housing.

L. In order to apply for Project financing, Optionee desires to obtain from the Port, and the Port desires to grant to Optionee, upon the specific terms and conditions set forth in this Agreement, an option to ground lease the Property.

M. The Planning Department reviewed the Project combined with the adjacent Davis Street Project and issued a Preliminary Mitigated Negative Declaration (2017-007850ENV) on October 25, 2017. The Mitigated Negative Declaration became final on March 9, 2018. The Mitigation Measures and Improvement Measures in the Final Mitigated Negative Declaration

will be enforceable conditions of the Mitigation Monitoring and Reporting Program which will be incorporated into the ground lease.

N. As required by Assembly Bill 2649, which authorized Port to submit to the procedures set forth in the Planning Code for obtaining a Certificate of Appropriateness or comparable determination, on April 4, 2018, the Historic Preservation Commission adopted a Certificate of Appropriateness with conditions by Motion No.0335 for the Project.

O. On May 3, 2018, the Director of the SF Planning Department adopted the Final Mitigated Negative Declaration and authorized the Project and the Davis Street Project pursuant to its authorization under SF Planning Code Section 315 and found that, on balance, the Project is consistent with the City's General Plan.

P. On [_____], 2018, by Resolution No. XX-XX, the Port Commission adopted the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and, among other things, approved this Agreement, the attached form of ground lease (*Exhibit D*), and attached schematic design ("**Schematic Design**") (*Exhibit C*), made findings that the Project is consistent with the State Legislation and authorized the Executive Director to seek necessary approvals from the Board of Supervisors and the California State Lands Commission ("**State Lands**").

Q. On [_____], 2018, by Resolution No. XX-XX, the Board of Supervisors adopted the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, confirmed the Port Commission's trust-related findings and approved the form of ground lease.

R. On [_____], 2018, as required by and in accordance with the State Legislation, State Lands made a favorable Consistency Determination, lifted the Public Trust use restrictions, and made the required findings and approved the form of ground lease and the consideration to be received by the Port under the ground lease and the Development MOU, which consideration from MOHCD limits the Property to affordable housing uses.

Now, therefore, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. GRANT OF OPTION.

1.1. Option Grant. Port hereby grants to Optionee the option to lease the Property subject to the Optionee's exercise of the Option to Lease substantially in the form and substance of the form of ground lease attached hereto as *Exhibit D* ("**Form Ground Lease**" or, when referring to a final effective ground lease, "**Ground Lease**") to construct or cause construction of the Project for the consideration and under the terms, covenants and conditions set forth in this Agreement (the "**Option**") and any other Transaction Documents.

1.2. Option Fee. Concurrently with the execution of this Agreement and in consideration thereof, Optionee shall pay and deliver to the Port the sum of One Hundred Dollars (\$100.00) as consideration for the Port's execution of this Agreement ("**Option Fee**"). The Option Fee is related to the Option only and in no way relates to Ground Lease payments that will be owed to the Port. The Option Fee is non-refundable.

1.3. Other Agreements. This Agreement addresses, among other matters, the conditions precedent to exercising the Option and the Close of Escrow and Delivery of the Ground Lease to Optionee. If the conditions precedent for the Close of Escrow as set forth in Section 5 are satisfied, then upon Close of Escrow, Port will lease the Property to Optionee, and Optionee will lease the Property from Port, pursuant to the Ground Lease. The Negotiation Agreement is coterminous with this Agreement and the Parties hereby agree that, upon earlier termination of this Agreement, the Negotiation Agreement will also terminate without further

action including notice and without cost or liability to either Party. In case of any conflict between this Agreement and the Negotiation Agreement, this Agreement shall control. From and after Close of Escrow, the Ground Lease will exclusively govern the rights and obligations of the Parties with respect to use and occupancy of the Property.

2. CONDITIONS PRECEDENT; EXERCISE OF OPTION. Optionee's right to exercise the Option is conditioned upon all the following:

(a) Optionee has performed all obligations under this Agreement required to be performed on its part before exercising the Option and no uncured Optionee Event of Default exists.

(b) Port and MOHCD staff have reviewed and approved Optionee's initial Financing Plan including its Development Budget. An initial Development Budget is attached hereto as **Exhibit F**. Revisions to the initial Financing Plan are subject to the Parties' mutual consent.

(c) Optionee has submitted commitment letters or other satisfactory evidence of funding commitments adequate to meet or exceed the requirements of the approved Financing Plan and sufficient to construct the Project; provided that with respect to the commercial space, Optionee will only be obligated to show evidence and commitments of financing up to and including the "cold shell" of such space), with (1) no conditions to funding other than standard and customary conditions and (2) no provisions requiring acts of Optionee prohibited in this Agreement or the other Transaction Documents, or prohibiting acts of Optionee required in this Agreement or the other Transaction Documents, and such documentation shows sources and uses of funds as may be required by such leasehold lender.

(d) Port and MOHCD staff have reviewed Optionee's proposed scope of development ("**Scope of Development**") attached hereto as **Exhibit B** and proposed schedule for the development of construction documents and its overall schedule for Project development ("**Schedule of Performance**") attached hereto as **Exhibit E** and found them acceptable. Revisions to the proposed Scope of Development and the proposed Schedule of Performance are subject to the Parties' mutual consent.

(e) A favorable Consistency Determination has been obtained by the Port.

(f) Optionee has obtained all other required Regulatory Approvals necessary to commence construction of the Initial Improvements except for building permits which will be obtained prior to commencing any Construction.

(g) Optionee and each of its partners executing this Agreement have delivered to Port a certificate to confirm the accuracy of the representations and warranties described in Section 12 substantially in the form of **Exhibit G** as of the date of the Option Notice.

(h) Port and MOHCD have entered into the Development MOU providing for MOHCD's payment of fair market value to Port and addressing other issues including coordination and roles during the Option Term and the Ground Lease term.

3. TERM OF OPTION; EXERCISE.

3.1. Term. The term of this Agreement ("**Term**") shall be for a period commencing on the Effective Date of this Agreement and ending on the earlier of: (i) June 30, 2020 (the "**Close of Escrow Deadline**"), or (ii) the date a Lease Memorandum is recorded in the Official Records, unless extended in the sole discretion of Port as provided in Section 3.3 ("**Expiration Date**").

3.2. Exercise of Option. No later than sixty (60) days before the Close of Escrow Deadline, and upon Optionee's satisfaction of the conditions set forth in Section 2, Optionee may exercise the Option by giving written notice to the Port ("**Option Notice**") which shall be irrevocable. After receipt of the Option Notice, the Port shall Deliver the Property to the

Optionee pursuant to the terms and conditions of this Agreement and the Ground Lease (“Close of Escrow”) on such date as agreed by the Parties, but not later than the Close of Escrow Deadline.

3.3. Close of Escrow Deadline Extension. Upon Optionee’s written request accompanied by an explanation of the need for an extension and provided that there is no uncured Optionee’s Event of default, Port’s Executive Director may, in her or his sole discretion, extend the Close of Escrow Deadline for up to twelve (12) months.

3.4. Termination. If the Close of Escrow does not occur by or on the Close of Escrow Deadline, as may be extended pursuant to Section 3.3, then this Agreement will terminate on the Close of Escrow Deadline unless earlier terminated in accordance with this Agreement and the Parties will have no further rights, obligations or liabilities under this Agreement except for those that survive its expiration or termination.

3.5. Quitclaim. Upon expiration or earlier termination of this Agreement without an effective Ground Lease, upon a written request by Port, Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by the Port to evidence the termination of the Option.

4. PREDEVELOPMENT ACTIVITIES. The following activities will take place prior to the Close of Escrow.

4.1. Exclusive Negotiation. Without limiting Port’s rights under Section 4.6, during the Term of this Agreement and so long as there is no uncured Optionee Event of Default, Port will not solicit or consider any other proposals or negotiate with any other tenant or developer with respect to the long-term development of the Property without Optionee’s consent.

4.2. Due Diligence. Port will extend the term of License 16358, dated February 6, 2018 for reference purposes (the “License”), with Optionee for a term concurrent with the Term of this Agreement to allow Optionee to perform due diligence in the form attached as *Exhibit H*. If Optionee desires to perform invasive testing or other invasive due diligence, Port may amend the License to allow such uses and account for the additional risks associated with such activities, including increased insurance coverage and/or amounts and broader indemnity and release provisions.

4.3. Schedule of Performance. Optionee will complete the assigned tasks set forth in this Agreement pursuant to the Schedule of Performance by the dates specified therein unless extended by Port’s Executive Director in her or his reasonable discretion; provided that the Close of Escrow Deadline can only be extended in accordance with Section 3.3.

4.4. Building Permit; Preparation of the Construction Documents. Optionee will prepare and submit the Construction Documents as set forth in this Section.

(a) Department of Building Inspection. Port will delegate to the City's Department of Building Inspection (“DBI”) review of Construction Documents and construction inspections for the initial construction of the Project. Port intends to rely on DBI's review of the Construction Documents and intends to perform a summary review of DBI's work in order to approve the Construction Documents. However, in the event that DBI does not review the Construction Documents or perform the inspections as contemplated by this Section 4.4(a) or if the Port needs assistance in performing a summary review of DBI's work, Port reserves the right to perform any independent review it deems necessary, including possible review by a third party. Port also retains final authority to approve/issue all building permits including permits for the initial construction of the Project and for long-term inspection and permitting over ongoing operations for the term of the Ground Lease. Optionee will submit all permit applications and Construction Documents relating to the Initial Improvements directly to Port and then submit them with Port’s stamp of receipt to DBI for processing. Optionee shall be responsible for payment of all DBI permit review fees.

(b) **Building Permit.** Optionee will submit a complete application for the building permit (subject to Optionee's election to make deferred submittals in accordance with the Port Building Code) within a time adequate to obtain the same before the date set forth in the Schedule of Performance.

(c) Optionee shall pay all costs of DBI's review of Construction Documents and construction inspections for the initial construction of the Project to Port as such fees are determined and calculated under the Port Building Code. Port will pay DBI under an interagency agreement between the departments. In addition, as further described in Section 4.9(a), Optionee is required to reimburse Port for Port's Building Permit Costs.

(d) The design of the Initial Improvements will be subject to the design review process pursuant to Planning Code Section 240 (Waterfront Special Use District). Port and DBI's review and approval of the Construction Documents will be consistent with the design matters previously approved by the Port Commission and the Planning Department pursuant to the Section 240 process. Except by agreement with Optionee, Port and DBI will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously.

(e) In the case of any disagreement between Port and DBI, Port's determination shall be final and conclusive.

(f) Definitions.

"**Construction Documents**" means the Schematic Design (which is attached to this Agreement as *Exhibit C*), the Preliminary Construction Documents and the Final Construction Documents for the Initial Improvements. As used in this Agreement "**Construction Documents**" does not mean any contracts between Optionee and any contractor, subcontractor, architect, engineer or consultant. Construction Documents shall not include any documents pertaining to any planned commercial spaces in the building, excepting the "cold shell" of such space.

"**Preliminary Construction Documents**" are design drawings and must be in sufficient detail and completeness to show that the Initial Improvements and the Construction thereof will comply with the Project Requirements and matters previously approved and will generally include, without limitation:

- (A) Site plan(s) at appropriate scale showing the buildings, streets, walks, Exterior Improvements, and other open spaces. All land uses shall be designated. All site development details and bounding streets, points of vehicular and pedestrian access shall be shown.
- (B) All building plans and elevations at appropriate scale.
- (C) Building sections showing all typical cross sections at appropriate scale.
- (D) Floor plans.
- (E) Preliminary tenant improvement plans.
- (F) Preliminary Exterior Improvement plans.
- (G) Plans for public access areas showing details of features intended to be Constructed as part of the Improvements, including but not limited to, walls, fences, railings, benches, lockers, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, trash containers, and other Exterior Improvements.
- (H) Outline specifications for materials, finishes and methods of construction.
- (I) Plans for interior and exterior signs required by the Port Building Code.

- (J) Site and exterior and interior (for common areas only) lighting plans.
- (K) Material and color samples for exterior facades, public plazas and open space, and other public areas.
- (L) Roof plans showing all proposed mechanical and other equipment, vents, photo-voltaic panels, satellite dish(es), antennae(s), and mechanical or elevator penthouses.
- (M) Geotechnical, structural, and other engineering assessments and investigation reports.
- (N) Utilities, placement and sources.

The Preliminary Construction Documents must be in conformance with the Schematic Design and the Scope of Development, and must incorporate conditions, modifications and changes specified by Port or DBI or required as a condition of Regulatory Approvals necessary to commence construction of the Initial Improvements as approved by Port as well as any requirements of the Mitigation Monitoring and Reporting Program ("MMRP") relating to the Project as described in the FMND.

Notwithstanding any other provision of this Agreement or the Ground Lease to the contrary, the Port Commission's approval of the Schematic Design is in no manner intended to, and is not, evidence or be deemed to evidence Port's approval of the Preliminary Construction Documents or the Final Construction Documents.

"Final Construction Documents" must include all plans and specifications required under applicable Laws to be submitted with an application for a building permit, including, to the extent applicable: (i) geotechnical, structural, and other engineering assessments and investigation reports, and (ii) a technical report summarizing construction objectives and methodology, operational requirements, project design criteria, and preliminary cost estimates. The Final Construction Documents must be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents for the Initial Improvements. The Final Construction Documents must incorporate conditions, modifications and changes required by Port or DBI or for the approval of the Preliminary Construction Documents for the Initial Improvements. The Final Construction Documents must include all drawings, specifications and documents necessary for the Initial Improvements to be constructed and completed in accordance with this Agreement.

(i) The Construction Documents must be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California. A California licensed architect must coordinate the work of any associated design professionals, including engineers and landscape architects.

(ii) A California licensed structural engineer must review and certify (by wet-stamp on the Construction Documents) all final structural plans and the sufficiency of structural support elements to support the Initial Improvements.

(g) **Submission of Construction Documents.** Optionee will prepare and submit the Construction Documents to Port for review and approval as provided in Sections 4.4(a) at the time or times established in the Schedule of Performance. If DBI is performing a review of the permit application and Construction Documents as contemplated in Section 4.4(a), Port will concurrently or immediately following DBI's review perform a summary review of the permit application and Construction Documents.

(h) **Port Review of Construction Documents.**

(i) **Scope of Review.** Port's review of the Construction Documents will be reasonable and may address the following, each a **"Required Element"**: (i) conformity and compliance with the Project Requirements, (ii) exterior architectural appearance and aesthetics of

structures on the Property, (iii) alterations to any structures on the Property, (iv) landscape and design of all outdoor areas, including those required under Regulatory Approvals to be accessible to the public, and (v) the design and appearance of all exterior signs (whether temporary or permanent).

(ii) Effect of Review. The Construction Documents are subject to the Port's review pursuant to this Agreement. Following its review, Port will approve or disapprove the Construction Documents. Except by mutual agreement with Optionee, Port will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously. If there is a disagreement between Port and Optionee as to whether or not a matter contained in a particular submittal has been approved previously or whether Port is acting in a manner that is inconsistent with matters that it approved previously, Port's reasonable judgment will apply in resolving the disagreement.

(iii) Method of Port Action/Prior Approvals. As to Port's review and/or approval of any aspect of any Construction Document (except for changes to Construction Documents, which will be governed by Section 4.4(i)), Port will approve, disapprove or approve conditionally each such element in writing, within thirty (30) days of proper submission by Optionee. If Optionee has properly submitted each set of the applicable Construction Documents and Port fails to meet such time frame, then Optionee may submit a written notice to Port requesting Port's approval or disapproval. The notice must display prominently in at least 16 point font on the envelope enclosing such request and on the first page of such request, substantially the following: **"APPROVAL REQUEST FOR CONSTRUCTION DOCUMENTS OF 88 BROADWAY PROJECT. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve or disapprove the request within ten (10) business days following receipt of the notice, then such submission will be deemed approved by Port.

(iv) Timing of Port Disapproval/Conditional Approval and Optionee Resubmission. If Port disapproves aspects of the Construction Documents in whole or in part, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If Port conditionally approves aspects of the Construction Documents, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Optionee will resubmit as expeditiously as possible and Port will approve or disapprove of such changes at the next Bi-Weekly Meeting. Optionee may continue making resubmissions until such time as Port approves the aspects of the Construction Documents subject to the process set forth in this Section.

(v) Exterior Improvements. Optionee acknowledges that any Exterior Improvements not otherwise approved by Port during Port's review of Construction Documents will need Port's prior approval before installation, which may require, in Port's sole discretion, review by the WDAC. Optionee will provide to Port the size, design, color, dimensions, text, materials, location, and method of installation of the Exterior Improvements to enable Port to evaluate the proposed request for approval.

(i) Changes in Final Construction Documents. Optionee will not make or cause to be made any material or substantial changes to any Port-approved aspect of the Construction Documents or as to a Required Element without Port's express written approval. Port will determine if any change is material or substantial at or before the Bi-Weekly Meeting immediately following the Optionee's proper submission of the change. Any changes that the Port determines are not material or substantial will be deemed approved. The provisions of Sections 4.4(b), 4.4(c) and 4.4(d) will apply to changes submitted by Optionee under this Section 4.4(i). The provisions of Section 4.4(g) will apply to material and substantial changes, except that the Port shall approve or disapprove the submitted change at or before the Bi-

Weekly Meeting immediately following the Optionee's proper submission of the change. Port's determination of whether such changes are material or substantial will be conclusive.

(j) ***Conflict With Other Governmental Requirements.*** Port will not withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in Construction Documents required by any other governmental body with jurisdiction if all of the following have occurred:

(i) Port or DBI receives written notice of the required change;

(ii) Port or DBI is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction of and requiring such element or change and with Optionee's architect;

(iii) Optionee cooperates fully with the governmental body having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design modifications of the Initial Improvements, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to Port may be achieved despite the imposition of such requirement; and

(iv) any conditions imposed in connection with such requirements is in compliance with Laws and other Regulatory Approvals.

(v) Optionee and Port recognize that the foregoing kind of conflict may arise at any stage in the preparation of the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of building permits. Accordingly, time is of the essence when such a conflict arises. Both Parties agree to use their best efforts to reach a solution expeditiously that is mutually satisfactory to Optionee and Port.

(k) ***Progress Meetings/Consultation.*** During the preparation of Construction Documents, Port and Optionee shall hold and attend periodic progress meetings every two weeks ("**Bi-Weekly Meetings**"). The Bi-Weekly Meetings shall be coordinated by the Developer and DBI staff shall also attend as appropriate. The Bi-Weekly Meetings may be cancelled by the Parties by mutual agreement. The Bi-Weekly Meetings will be held to coordinate the preparation of, submission to, and review by Port and DBI of Construction Documents and changes thereto in accordance with the provisions of this Section. Port staff and Optionee (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration and response by Port and DBI.

4.5. *Other Regulatory Approvals.*

(a) **Other Regulatory Approvals.**

(i) Optionee understands that its construction of the Initial Improvements require Regulatory Approvals from Regulatory Agencies, which may include RWQCB, the City's Planning Commission and/or Zoning Administrator, SFPUC, and other Regulatory Agencies. Except with respect to the Consistency Determination, Optionee will be solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section 4.5(a).

(ii) Optionee understands and agrees that Port is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Property (subject to the Public Trust) and not as a Regulatory Agency with certain police powers. Optionee agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for Construction of the Initial Improvements can be obtained. Optionee agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for

the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or Construction of the Initial Improvements will be issued by the appropriate Regulatory Agency and Optionee understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Optionee will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Property, including Port itself in its regulatory capacity. Port's status as an agency of the City will in no way limit the obligation of Optionee, at Optionee's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Property or Construction of the Initial Improvements. By entering into this Agreement, Port is in no way modifying or limiting the obligations of Optionee to Construct the Initial Improvements in accordance with all Laws. Without limiting the foregoing, except with respect to the Consistency Determination, Optionee understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Initial Improvements, this Agreement or the Ground Lease, and any such advocacy, promotion or lobbying will be done by Optionee at Optionee's sole cost and expense.

With respect to Regulatory Approvals under this Section 4.5(a), Port's sole obligation will be to seek a Consistency Determination as set forth in Section 4.7. Optionee hereby waives any Losses against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency to issue any required Regulatory Approval or to issue any approval of the Initial Improvements, including without limitation the Consistency Determination. Nothing in this Section shall relieve the Port of its obligations under this Agreement to seek a Consistency Determination as set forth in Section 4.8.

(iii) Optionee will not seek any Regulatory Approval without first obtaining approval of Port, which (except as set forth in this Section 4.5(a)) will not be unreasonably withheld, conditioned or delayed. Throughout the Term, Optionee will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Optionee's efforts to obtain Regulatory Approvals. Port will provide Optionee with its approval or disapproval thereof in writing to Optionee within ten (10) days after receipt of Optionee's written request, or if Port's Executive Director determines that Port Commission or Board of Supervisors action is necessary, at the first Port and subsequent Board hearings after receipt of Optionee's written request subject to notice requirements and reasonable staff preparation time. If Port disapproves any request under this subsection (iii), such disapproval shall state the reasons therefor in writing. The Parties agree that Construction Documents and building permits for the Initial Improvements will be governed by the provisions of Section 4.3, and not by this Section 4.5(a) (and for avoidance of doubt, the waiver and release set forth in Section 4.5(a)(i) does not apply to the submission, review and approval or disapproval of Construction Documents and building permits as contemplated in this Agreement).

(iv) Port will cooperate reasonably with Optionee in its efforts to obtain the Regulatory Approvals required for the Project. However, Optionee will not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval if Port is required to be a co-permittee, applicant or co-applicant under such Regulatory Approval or the conditions and/or restrictions in the Regulatory Approval could create any obligations on the part of Port or could otherwise encumber, restrict or change the use of Port property, unless in each instance, Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions.

(v) Optionee will bear, and will pay as they are incurred, all costs associated with (x) applying for and obtaining any necessary Regulatory Approval, and (y) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of

any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on the Property or require off-site improvements, removal, or other measures. Optionee has the right to appeal or contest any condition in any manner permitted by law imposed upon any such Regulatory Approval. Optionee will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Optionee will pay or discharge any fines, penalties or corrective actions imposed as a result of Optionee's failure to comply with the terms and conditions of any Regulatory Approval subject to Optionee's right to appeal and contest such fines, penalties or corrective actions. No Port approval will limit Optionee's obligation to pay all the costs of complying with any conditions or restrictions.

(b) Without limiting any other Indemnification provisions of this Agreement, Optionee will Indemnify Port and the Indemnified Parties from and against any and all Losses which may arise in connection with Optionee's failure to seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval except to the extent that such Losses arise solely from the gross negligent or willful acts or omissions of Port acting in its proprietary capacity.

4.6. Current Use of the Property. Optionee acknowledges and understands that, under Port Lease No. L- 16141, SP Plus – Hyde Parking Joint Venture, a California General Partnership, leases SWL 322-1. Port has the right to terminate such lease on thirty (30) days' prior written notice. Port reserves the right to execute new leases or other property use agreements allowing uses of the Property or any portion thereof prior to the anticipated delivery of the Property pursuant to the Ground Lease, provided that (i) any such new agreement shall expire or be terminable by Port without cost to Optionee, prior to delivery of the Property to Optionee; (ii) Port will allow Optionee access to the Property as contemplated in Section 4.1; and (iii) Port will provide a copy of any new agreement to Optionee upon request. Any such new agreement will require an acknowledgement and agreement that such user is not eligible for relocation benefits or assistance and that such user may not unreasonably interfere with Optionee's rights to investigate and perform due diligence on the Property. Port will require its tenants and any other users of the Property to maintain the Property in its existing condition during the Term of this Agreement.

4.7. Uses. As of the Effective Date, the City is currently seeking legislation to modify the definition of affordable housing and make certain other changes for the benefit of the Project. The Parties understand that such legislation would not become operative until January 1, 2019 at the soonest. Optionee is assuming all risks associated with seeking such legislation, including without limitation, the risk that such legislation will not be enacted and Optionee hereby waives any Losses against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the City's efforts with respect to such legislation.

4.8. Consistency Determination. Optionee acknowledges that the Property is subject to the Public Trust and that the Port Commission and State Lands must make certain findings required by, and otherwise determine the Project is consistent with the State Legislation, and any other applicable statutes governing the Port's granted lands and that Port cannot enter into this Agreement or the Ground Lease absent such findings. Optionee further acknowledges that: (i) obtaining a favorable Consistency Determination may involve a lengthy and complex entitlement process, the result of which Port cannot guarantee; (ii) Port is making no representations or assurances regarding the Project's consistency with the State Legislation or the likelihood that the Project will obtain a favorable Consistency Determination; (iii) Optionee is assuming the risk of not obtaining a favorable Consistency Determination that will permit the development and construction of the Project; and (iv) Port has final discretion over the form and substance of and is solely responsible for seeking a Consistency Determination for the Project. If, in order to obtain a favorable Consistency Determination, the Project must be revised, Port

will use good faith efforts to consult with Optionee and MOHCD to determine the best way to implement such revisions.

4.9. Port's Costs.

(a) Port will pay for the appraisal and other costs related to the Consistency Determination, its internal staff time, and its consultants and legal costs associated with the negotiation of any Transaction Documents. Notwithstanding the preceding sentence, Optionee is responsible for State Lands' costs and Optionee must reimburse Port for any costs Port pays to State Lands to reimburse State Lands for its costs associated with its approvals (currently estimated at \$50,000 for informational purposes only). Optionee is responsible for all other costs, including the cost of obtaining Regulatory Approvals.

(b) Port's Building Permit Costs. Optionee shall reimburse Port for Port's Building Permit Costs in the manner described in Section 4.4(b) and this Section.

(i) No later than the Effective Date, Optionee shall make an advance payment to Port of Fifty Thousand dollars (\$50,000) to reimburse Port's Building Permit Costs (a "Payment Advance").

(ii) Within thirty (30) days after the end of each calendar quarter, Port will provide a reasonably detailed statement showing Port's Building Permit Costs for the immediately preceding quarter, including a calculation of the difference between the amounts of the Payment Advance and actual costs for the immediately preceding quarter ("Port Statement"). Port will include any invoices for outside consultants providing engineering and inspection services to the Port during that quarter in the Port Statement. Port will apply the Payment Advance to the Port Statement. Not later than fifteen (15) days after Port's delivery of the Port Statement, Optionee shall pay any remaining balance on a Port Statement and will replenish any portion of the Payment Advance so applied such that the Payment Advance will remain at \$50,000.

(iii) Optionee expressly agrees that upon expiration or termination of this Agreement, Port may apply any overpayment against any costs or other amounts then owed to Port under this Agreement or the Ground Lease. If this Agreement expires or terminates without a lease, any remaining overpayment (after application to amounts owed under this Agreement) will be returned to Optionee within ninety (90) days.

(iv) Port will use good faith efforts to minimize Port's Building Permit Costs in light of DBI's review.

(c) Port will have the right to terminate or suspend any work for Optionee under this Agreement upon Optionee's failure to pay amounts due and owing hereunder, and continuing until Optionee makes payment in full to Port. Optionee's obligation to reimburse Port for Port's Building Permit Costs incurred during the Term of the Agreement will survive the expiration or termination of this Agreement.

(d) The Parties acknowledge and agree that: (a) under California Government Code section 87103.6, Optionee's payments of Port's Building Permit Costs are not a "source of income" within the meaning of the California Political Reform Act; (b) Port reserves the full and sole discretion and authority to determine which consultants, contractors, or employees to hire or assign to work on Port's behalf on the Project, to direct and evaluate their work and to establish the amount of compensation paid; (c) Optionee will have no control over which Port account is used to pay for its consultants, contractors, or employees; (d) Optionee will have no right to withhold payment of or recover from Port any portion of Port's Building Permit Cost that have become due and payable under this Agreement (regardless of whether or not a lease and/or other transaction document is executed); and (f) Optionee's obligation to pay Port's Building Permit Costs that have become due and payable will survive termination or expiration of this Agreement, and Port may offset any outstanding amounts due and payable (including amounts

due and payable to Port under Section 7.2 (Port's Remedies) following a Optionee Event of Default) against such amounts before Port is obligated to refund any unused balance to Optionee.

4.10. Taxes and Assessments.

(a) For any period before Close of Escrow, Optionee is responsible for the payment of any ad valorem taxes (including possessory interest and special taxes) assessed by reason of this Agreement or Optionee's entry upon the Property under any other agreement or otherwise. Ad valorem taxes and assessments levied, assessed, or imposed for any period on or after Close of Escrow, including possessory interest and special taxes, are the sole responsibility of Optionee, as provided in the Ground Lease.

(b) Optionee recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Optionee may be subject to the payment of property taxes levied on such interest. Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City report certain information relating to this Agreement, and any renewals of this Agreement, to the County Assessor within sixty (60) days after any such transaction, and that Optionee report certain information relating to any assignment under this Agreement to the County Assessor within sixty (60) days after such assignment transaction. Optionee agrees to provide such information as may be requested by Port to enable Port to comply with this requirement.

5. CONDITIONS TO PORT'S OBLIGATION TO CLOSE ESCROW.

5.1. Port's Conditions Precedent. The following are conditions precedent to Port's obligation to Close Escrow:

(a) Port has received a timely Option Notice and all the conditions precedent for such notice (as described in Section 2) have been satisfied or waived by Port;

(b) Port staff has approved the Construction Documents as contemplated under this Agreement including the Required Elements and received acceptable evidence that the initial site building permit and addenda needed to commence construction are ready to be issued (including a "permit ready letter" for such site building permit and addenda) pending Ground Lease execution and recordation of the Lease Memorandum;

(c) Optionee has incorporated any changes to the Project required by State Lands, Port or City in connection with their Regulatory Approvals or necessary to obtain such Regulatory Approvals and has obtained all required Regulatory Approvals necessary to commence construction of the Initial Improvements and they are final, binding and non-appealable (the Parties agree that a building permit is covered under Section 5.1(b));

(d) Port has approved Optionee's final: Scope of Development, Schedule of Performance and Development Budget (including the Financing Plan) as may have been revised since the Effective Date;

(e) Port staff or applicable City agency has approved other submissions required for Ground Lease execution, such as a Local Hiring Plan approved by the City's Office of Economic and Workforce Development and the "Nondiscrimination in Contracts and Benefits" form approved by the CMD;

(f) No changes in federal, state, or local Laws have occurred that would prevent the performance of the Parties' obligations as contemplated in the Ground Lease or have an adverse effect on the Project as contemplated in the Transaction Documents or on Port;

(g) Port staff has approved Optionee's Management Plan which details Optionee's long-term management plans and which will be attached and incorporated into the Ground Lease;

(h) Port staff has approved Optionee's leasing plan for the non-residential components of the Project which details the leasing schedule;

(i) If Optionee elects to finance the construction of any part of the Initial Improvements with a private entity leasehold lender, then such financing will close simultaneously with the Close of Escrow (excluding any financing for commercial improvements beyond the cold shell of such improvements, and excluding any financing of Affordable Housing Program Funds from the Federal Home Loan Bank); the Port's fee interest in the Property shall not be encumbered by any financing document;

(j) Optionee has deposited into Escrow the Ground Lease, other necessary Transaction Documents and the Lease Memorandum duly executed by Optionee required to be executed by Optionee prior to or concurrently with Close of Escrow;

(k) Optionee has provided proof of insurance as required under Section 21 of the Ground Lease;

(l) Optionee has paid or deposited into Escrow funds necessary for payment to the City of all development exaction fees that are required to be paid prior to commencement of Construction of the Initial Improvements;

(m) Optionee has deposited into Escrow a duly executed and authorized performance bond or other satisfactory construction security as required under Section 13.1(h) of the Ground Lease;

(n) Port staff has reasonably approved evidence of a guaranteed maximum price contract for Construction of the Initial Improvements consistent with the Port-approved Construction Documents for the purpose of determining consistency with the Development Budget, Scope of Development, and consistency with the terms of this Agreement and Form Ground Lease;

(o) Port staff has approved Optionee's integrated pest management plan;

(p) Optionee has performed all obligations under this Agreement required to be performed on its part before exercising the Option, no Optionee Event of Default or uncured Optionee Event of Default exists;

(q) All of Optionee's and its partners executing this Agreement representations and warranties made in Section 12 were true and correct in all aspects when made and are true and correct in all aspects as of the date of the Option Notice. At the Close of Escrow, Optionee, and each of its partners, will deliver to Port a certificate to confirm the accuracy of such representations and warranties in all aspects substantially in the form of *Exhibit G*;

(r) The WDAC has reviewed and provided recommendations, if any, and the Planning Department and the Port Commission as required under Planning Code Section 240 have reviewed and approved the design of the Initial Improvements, and such approvals are final, binding and non-appealable;

(s) Optionee has deposited into Escrow such evidence of authority to enter into the Ground Lease, and any other Transaction Documents as Port and the Title Company may reasonably require to be executed by Optionee prior to or concurrently with Close of Escrow (including certificates of good standing, officer's certificates, resolutions, and certificates of incumbency);

(t) The Title Company is prepared to issue to Port the title insurance policy required by Section 6.3 to be delivered to Port; and

(u) The Port Commission's authorization and approval, by resolution, of the Development MOU, this Agreement, the Form Ground Lease, and any other Transaction

Document that requires such approval, and the Board of Supervisors' authorization and approval, by resolution, of the Development MOU, the Form Ground Lease and any other Transaction Document that requires such approval to be executed by Port, have been completed and have become and remain effective, and such approvals shall be finally granted.

5.2. *Satisfaction of Port's Conditions.* The conditions precedent set forth in Section 5.1 are intended solely for the benefit of Port. If any such condition precedent is not satisfied on or before the Close of Escrow, the Executive Director, or, if the Executive Director determines that waiver of the condition precedent materially affects the rights, obligations, or expectations of Port, the Port Commission by resolution, has the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with Delivery of the Ground Lease, or (ii) terminate this Agreement and exercise its rights and remedies hereunder.

5.3. *Conditions to Optionee's Obligation to Close Escrow.* The following are conditions precedent to Optionee's obligation to Close Escrow:

- (a) Optionee has delivered the Option Notice and all the conditions precedent for delivering the Option Notice (as described in Section 2) have been satisfied by Optionee or waived by Port;
- (b) Port has performed all obligations under this Agreement that is required to perform before the Close of Escrow and no uncured Port Event of Default exists;
- (c) Except for rights of Port reserved under the Ground Lease or as otherwise allowed as Permitted Title Exceptions or by Optionee in writing prior to Close of Escrow, Port is prepared to Deliver the Premises free of all tenants and occupants as of the Close of Escrow;
- (d) Port staff has approved the Construction Documents as contemplated under this Agreement including the Required Elements and the initial site building permit and addenda needed to commence construction are ready to be issued pending Ground Lease execution and recordation of the Lease Memorandum;
- (e) Optionee has incorporated any changes to the Project required by State Lands, Port or City in connection with their Regulatory Approvals or necessary to obtain such Regulatory Approvals and has obtained all required Regulatory Approvals necessary to commence construction of the Initial Improvements and they are final, binding and non-appealable (the Parties agree that a building permit is covered under Section 5.1(b));
- (f) Port has approved evidence of adequate financing for the Construction of the Initial Improvements in accordance with Section 2(c); and Optionee has obtained the approvals contemplated in Section 5.1.
- (g) If Optionee elects to finance any part of the Initial Improvements with a private leasehold lender, then such financing will close simultaneously with the Close of Escrow;
- (h) Port has deposited into Escrow the Ground Lease, any other Transaction Documents to be executed by Port and the Memorandum duly executed by Port;
- (i) The WDAC has reviewed and provided recommendations, if any, and the Planning Department and the Port Commission as required under Planning Code Section 240 have reviewed and approved the design of the Initial Improvements, and such approvals are final, binding and non-appealable;
- (j) The Title Company is prepared to issue to Optionee, the title insurance policy required by Section 6.4 to be delivered to Optionee;
- (k) No changes in federal, state, or local Laws have occurred that would prevent the performance of the Parties' obligations as contemplated in the Ground Lease or have an adverse effect on the Project as contemplated in the Transaction Documents or on Optionee;

(l) There has been no material change to the Property since the Optionee's execution of this Agreement; and.

(m) The Port Commission's authorization and approval, by resolution, of this Agreement, the Development MOU, the Form Ground Lease, and any other Transaction Document that requires such approval, and the Board of Supervisors' authorization and approval, by resolution, of the Development Agreement, Form Ground Lease and any other Transaction Document that requires such approval to be executed by Port, have been completed and have become and remain effective, and such approvals shall be finally granted.

5.4. Satisfaction of Optionee's Conditions Precedent. The conditions precedent set forth in Section 5.3 are intended solely for the benefit of Optionee. If any such condition precedent is not satisfied on or before the Close of Escrow, Optionee has the right in its sole discretion to waive in writing the condition precedent in question and proceed with the Close of Escrow and acceptance of the Property or to terminate this Agreement.

6. CLOSE OF ESCROW.

6.1. Escrow. Optionee shall open an escrow for the delivery of the Property through the Ground Lease ("Escrow") with Old Republic Title Company or another local title company chosen by Optionee ("Title Company"). Optionee shall open the Escrow not later than the date specified in the Schedule of Performance. Each Party shall prepare escrow instructions as are necessary and consistent with this Agreement. Port shall accept or provide comments on Optionee's escrow instructions within seven (7) days after receipt. Optionee's escrow instructions shall, among other things, provide that the Title Company will record a Lease Memorandum substantially in the form attached hereto as *Exhibit I*, as well as any other documents which are to be recorded upon Close of Escrow as part of the Project.

6.2. Close of Escrow. After receipt of the Option Notice, Port shall execute and acknowledge, as necessary, and deposit into Escrow with the Title Company the following: (1) the Ground Lease; (2) the Lease Memorandum in recordable form; (3) a copy of the resolution of the Port Commission authorizing and approving this Agreement and the Form Ground Lease; and (4) a copy of the resolution of the Board of Supervisors authorizing and approving the Form Ground Lease. On or before the Close of Escrow, Optionee shall execute and acknowledge (or cause to be executed and acknowledged), as necessary, and deposit into Escrow with the Title Company the following: (1) the Ground Lease; (2) the Lease Memorandum in recordable form; (4) such resolutions of Optionee and its constituent members authorizing the execution and delivery of the Ground Lease and any related agreements, and any other evidence of authority as Port or the Title Company may reasonably require; and (5) all costs of escrow. Upon the Close of Escrow, the Title Company shall record in the Official Records the Lease Memorandum, and any other documents reasonably required to be recorded.

(a) Expenses. All expenses, fees or costs incurred in connection with the close of Escrow, including but not limited to transfer taxes, conveyance taxes, recording charges (if any), and costs of title insurance shall be borne by the Optionee.

(b) Proration of Taxes. Real property taxes on the Property shall be prorated as of the date of Close of Escrow of the Ground Lease.

6.3. Condition of Title.

(a) Permitted Title Exceptions. Except for the items reserved in the Ground Lease or underground utility lines (including for water, power, and sewer) existing as of the Effective Date of this Agreement (collectively, "**Permitted Title Exceptions**"), and such other matters as Optionee will cause or suffer to arise, Port will Deliver to Optionee the Property under and subject to the provisions of the Ground Lease for the term specified in the Ground Lease, free and clear of possession by others and liens, assessments, and taxes.

(b) Title Defect. If at the time scheduled for Close of Escrow, other than as set forth in Section 6.3(a), any (i) possession by others, (ii) rights of possession other than those of Optionee or Port as reserved under the Ground Lease, or (iii) lien, encumbrance, assessment, tax or other matter which is not a Permitted Title Exception, encumbers the Property (“**Title Defect**”), Port will have up to thirty (30) days from the date scheduled for Close of Escrow to remove the Title Defect (the “**Title Defect Cure Period**”). In such event, Close of Escrow will be extended to the earlier of seven (7) business days after the Title Defect is removed or the end of the Title Defect Cure Period. If the Title Defect can be removed by bonding and Port has not bonded within the Title Defect Cure Period, Optionee may cause a bond to be issued. If Optionee causes a bond to be issued Port, at its option, will reimburse Optionee for the cost of such bond within thirty (30) days of demand therefor or offset such amounts against any rent due under the Ground Lease.

(c) Optionee’s Remedies With Respect to Uncured Title Defect. If after expiration of the Title Defect Cure Period, a Title Defect still exists at the time scheduled for Close of Escrow, Optionee may by written notice to Port either terminate this Agreement or accept Delivery of the Property. If Optionee accepts Delivery, the Title Defect will be deemed waived by Optionee and shall be considered a Permitted Title Exception. If Optionee does not accept Delivery and fails to terminate this Agreement within seven (7) days after expiration of the Title Cure Period, Port may terminate this Agreement upon three (3) days written notice to Optionee. If this Agreement is terminated under this Section 6.3(b), Optionee will have no further remedies against, or other obligations to Port with respect to such termination (other than those that survive expiration or earlier termination of this Agreement). In the event that Optionee does not accept Delivery and fails to terminate this Agreement within seven (7) days after the expiration of the Title Defect Cure Period and Port elects not to terminate this Agreement as set forth in this Section, then this Agreement will continue in full force and effect and any Title Defect will be deemed waived by Optionee.

6.4. Title Insurance to be Issued at the Close of Escrow.

(a) The escrow instructions will provide that concurrently with Close of Escrow, the Title Company will issue and deliver:

(i) To Optionee, an A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as Optionee may request reasonably, in an amount designated by Optionee which is satisfactory to the Title Company, insuring that the leasehold estate in the Property is vested in Optionee subject only to the Permitted Title Exceptions, and with such C.L.T.A. form endorsements as may be requested reasonably by Optionee, all at the sole cost and expense of Optionee; and

(ii) To Port, an A.L.T.A. extended coverage title insurance policy issued by Title Company in an amount specified by Port and satisfactory to the Title Company, insuring Port’s fee interest in the Property subject to the Public Trust, the Ground Lease and the other Permitted Title Exceptions which are applicable to the fee, and with such C.L.T.A. endorsements as Port may reasonably request, all at the sole cost and expense of Optionee, provided Port pays any incremental cost for such policy (including endorsements) in excess of the cost of the title policy and endorsements issued to Optionee.

(b) Optionee is responsible for securing any and all surveys and engineering studies at its sole cost and expense, as needed for the title insurance required under this Agreement or as otherwise required to consummate the transactions contemplated by this Agreement. Optionee, at no cost to Port, must provide Port with complete and accurate copies of all such final surveys (which surveys must be certified to Port in a form reasonably acceptable to Port) and engineering studies.

(c) Construction Endorsement. In the event that the title insurance policy described in Section 6.4(a)(ii) is issued to Port, and in the event that Optionee obtains an

endorsement to its title insurance policy insuring Optionee that the Initial Improvements have been completed free and clear of all mechanics' and materialmen's liens, Optionee will also obtain such an endorsement for Port with respect to Port's title insurance policy, all at the sole cost and expense of Optionee.

6.5. Restrictions on Encumbering Port's Reversionary Interest. Under no circumstance whatsoever shall Optionee place or suffer to be placed any lien or encumbrance on Port's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Optionee may not enter into agreements granting licenses, easements or access rights over the Property if the same would be binding on Port's reversionary interest in the Property, or obtain changes in applicable land use laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Port's prior written consent, which consent may be withheld in Port's sole discretion.

As further detailed in the Ground Lease, project financing from institutional lenders, governmental entities, nonprofits and other lenders may be secured by Tenant's Leasehold Estate or a Subleasehold Estate (as those terms are defined in the Lease) and Port will consent to reasonable provisions in lease riders and/or affordability covenants/restrictions required to receive public financing if such riders and covenants (including tax credits, and state grants or loans) are approved by MOHCD, provided that such riders and covenants are materially consistent with this Lease, Port's authority as trustee under the Burton Act and the favorable Consistency Determination made by the Port Commission and State Lands in the Resolutions referenced in *Recitals P* and *R*, or required to be made hereafter, and do not increase Port's liability as reasonably determined by Port.

7. DEFAULTS; REMEDIES.

7.1. Optionee Events of Default. Each of the following constitutes a "Optionee Event of Default":

- (a) Optionee fails to pay any amount required to be paid under this Agreement when due and such failure continues for fifteen (15) business days following written notice from Port to Optionee;
- (b) Optionee fails to comply with the Schedule of Performance as such schedule may be extended or stayed by Port; or
- (c) Optionee fails to Close Escrow and/or does not accept Delivery of the Ground Lease within the times set forth in this Agreement, provided that all pre-Delivery conditions to Optionee's obligation to Close Escrow and/or accept Delivery have been satisfied, and such failure continues for a period of twenty (20) days after written notice from Port;
- (d) Optionee files a petition for relief, or an order for relief is entered against Optionee, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Optionee are not dismissed or stayed within one hundred twenty (120) days; or a writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Optionee, which appointment is not dismissed within one hundred twenty (120) days;
- (e) Optionee makes a general assignment for the benefit of its creditors;
- (f) Optionee makes a Transfer or Significant Change in violation of Section 13.1 without Port's consent; or
- (g) Optionee fails to comply with any other provision of this Agreement, if not cured within thirty (30) days after Port's notice to Optionee, or, in the case of a default not

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

7.2. Port's Remedies. Upon the occurrence of a Optionee Event of Default, Port has the remedies set forth below:

(a) Termination. Port may terminate this Agreement upon thirty (30) days' written notice to Optionee.

(b) Specific Performance. Port may institute an action for specific performance.

(c) The remedies provided for in this Agreement are in addition to and not in limitation of other remedies including those provided at Law or in equity.

(d) Notwithstanding any other provision of this Agreement, in the event of an uncured Optionee default, the Parties agree that Port, as Port's sole and exclusive monetary remedy for damages, is entitled to an amount of Eighty Five Thousand Dollars (\$85,000) as liquidated damages, increased by three percent (3%) on each anniversary of the Effective Date of this Agreement. The terms and conditions of this Section 7.2(c) shall survive the expiration of earlier termination of this Agreement.

THE PARTIES AGREE THAT THE SUM OF EIGHTY FIVE THOUSAND DOLLARS (\$85,000) IS A REASONABLE SUM CONSIDERING THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO PORT THAT REASONABLY COULD BE ANTICIPATED AND THE EXPECTATION THAT PROOF OF ACTUAL DAMAGES COULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. IN PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF EACH OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE.

Optionee's Initials

Port's Initials

7.3. Port Events of Default. Each of the following constitutes a "Port Event of Default":

(a) Port's failure to deliver the Ground Lease when the conditions to Close of Escrow in Port's favor have been satisfied, or waived by Port and where such failure is in violation of this Agreement, and continues for a period of twenty (20) days from the date of written notice from Optionee shall constitute a "Port Event of Default".

(b) Port's failure to perform any other obligation required by this Agreement after receipt of written notice of the specific failure by Optionee and a reasonable time to cure but not less than thirty (30) days after the date of Optionee's written notice or, in the case of a default not susceptible of cure within thirty (30) days, Port fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time.

7.4. Optionee's Remedies. Upon the occurrence of a Port Event of Default, Optionee has the remedies set forth below:

(a) Termination. Optionee may terminate this Agreement upon thirty (30) days' written notice to Port.

(b) Specific Performance. Optionee may institute an action for specific performance.

(c) Port will not be liable to Optionee for monetary damages caused by any Port Event of Default.

7.5. Survival. The provisions of this Section will survive the expiration or earlier termination of this Agreement.

8. AS IS CONDITION OF THE PROPERTY; RELEASE; INDEMNIFICATION.

The provisions of this Section 8 will survive the expiration or earlier termination of this Agreement.

8.1. As Is. Port will not prepare the Property for any purpose whatsoever, except to Deliver the Property free of tenants and other occupants unless otherwise agreed to by Optionee in writing prior to Close of Escrow. Subject to the provisions of this Section, Optionee agrees to accept the Property in its "AS IS WITH ALL FAULTS" condition on the date of Close of Escrow.

8.2. Independent Investigation by Optionee. Optionee acknowledges that it has been afforded a full opportunity to inspect Port's records relating to conditions of the Property. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Optionee is not relying on any such information. All information contained in such records is subject to the limitations set forth in Section 8.3. Optionee represents and warrants to Port that Optionee has performed a diligent and thorough inspection and investigation of the Property, either independently or through its own experts including (i) the quality, nature, adequacy and physical condition of the Property including the structural elements, foundation, and all other physical and functional aspects of the Property; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Property, including the soil and any groundwater (including Hazardous Materials conditions (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability of the Property for the Initial Improvements and Optionee's planned use of the Property; (iv) the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction on the Property; (v) matters regarding conditions at the Property disclosed in the Form of Ground Lease including without limitation The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016 ; and (vi) all other matters of material significance affecting the Property and its development.

8.3. Disclaimer of Representations and Warranties.

DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. OPTIONEE AGREES THAT THE PROPERTY IS BEING DELIVERED BY PORT AND ACCEPTED BY OPTIONEE IN ITS AS IS WITH ALL FAULTS CONDITION. OPTIONEE REPRESENTS AND WARRANTS TO PORT THAT OPTIONEE HAS RECEIVED AND REVIEWED PORT'S RECORDS. OPTIONEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, INCLUDING PORT, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION IN, ON, UNDER, OR PERTAINING TO THE PROPERTY, THE SUITABILITY OR FITNESS OF THE PROPERTY OR APPURTENANCES TO THE PROPERTY FOR THE DEVELOPMENT, USE OR OPERATION OF THE INITIAL IMPROVEMENTS, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PROPERTY, THE ACCURACY OF PORT'S RECORDS, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PROPERTY OR THE PROPOSED PROJECT.

Optionee's Initials

8.4. Release. As a material condition to Port's agreement to enter into this Agreement, as part of Optionee's agreement to accept the Property in its "As Is With All Faults" condition, Optionee, on behalf of itself and its successors and assigns, is deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Optionee may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Property (including soil and groundwater conditions), including any Hazardous Materials in, on, under, above or about the Property, (ii) the suitability of the Property for Construction of the Initial Improvements, (iii) any applicable Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising or lost at any time and from any cause, in, on, under, or about the Property, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but the foregoing waivers or releases of claims do not extend to Losses to the extent caused by the sole negligence or willful misconduct of the Indemnified Parties.

Further, Port would not be willing to enter into this Agreement without the agreement of Optionee, on behalf of itself and its successors and assigns, to waive any right to recover from, and forever release, acquit and discharge, Port and the Indemnified Parties from any and all consequential, incidental or punitive damages, and Optionee expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Optionee or other waivers contained in this Agreement and as a material part of the consideration of this Agreement, Optionee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue the Indemnified Parties for such damages arising out of this Agreement regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Optionee understands and expressly accepts and assumes the risk that any facts concerning the claims released, waived and discharged in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Therefore, with respect to the claims released, waived and discharged in this Agreement, Optionee waives any rights or benefits provided by Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Optionee's Initials

Optionee agrees that the releases, waivers, and discharges given in and/or contemplated by this Section 8.4 includes all known and unknown, disclosed and undisclosed, and anticipated and

unanticipated claims regarding (i) all or any of the physical, geotechnical, and environmental condition in, on, under, above, or about the Property (including soil and groundwater conditions), including any Hazardous Materials in, on, under, above or about the Property, (ii) the suitability of the Property for Construction of the Initial Improvements, (iii) applicable Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, (iv) damages by death of or injury to any Person or to property of any kind whatsoever and to whomever belonging, (v) goodwill, or business opportunities arising or lost at any time and from any cause, (vi) goodwill, or business opportunities arising or lost at any time and from any cause, in, on, under, or about the Property, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, and (vii) consequential, incidental or punitive damages. Accordingly, Optionee hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section.

8.5. General Indemnification.

Without limiting any Indemnity contained in any other agreement between the Parties, Optionee will Indemnify the Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, (i) out of City's agreement to the terms and conditions of this Agreement; (ii) out of any injuries or death of any person or damage of any property occurring in, on or about the Property which arise solely as a result of Optionee's or its agents' or invitees' acts or omissions; or (iii) any failure by Optionee or its Agents or Invitees, as applicable, in the observation or performance of any of the terms, covenants or conditions of this Agreement. Optionee's Indemnification obligations are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Optionee agrees to immediately defend the Indemnified Parties against any claims that are actually or potentially within the scope of the Indemnity provisions of this Agreement even if such claims may be groundless, fraudulent or false. The Indemnified Party against whom any claim is made which may be within the scope of the Indemnity provisions of this Agreement shall provide notice to Optionee of such claim within a reasonable time after learning of such claim, and thereafter shall cooperate with Optionee in the defense of such claim. Optionee's obligation to defend shall arise at the time such claim is tendered to Optionee by the Indemnified Parties and shall continue at all times thereafter until finally resolved; provided, however, any failure to provide such notice shall not affect Optionee's obligations under any such Indemnity provisions except to the extent Optionee is materially prejudiced by such failure. Exclusion. Optionee will not be required to Indemnify the Indemnified Parties if such Losses are caused solely and directly by the gross negligence or willful misconduct of any of the Indemnified Parties.

Optionee's Indemnification obligations set forth in this Agreement and Optionee's releases, waivers, and discharges made in this Agreement will survive the expiration or earlier termination of this Agreement as to any acts or omissions occurring prior to such date, provided that after Close of Escrow, Optionee's Indemnification obligations under this Agreement will be subsumed in the Indemnification obligations of Optionee under the Ground Lease.

9. FORCE MAJEURE.

(a) Effect of Force Majeure. For the purpose of this Agreement, neither Optionee, Port, nor any successor in interest (the "**Delayed Party**," as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other Party in the event of Force Majeure, and the time fixed for performance of any such obligation or satisfaction of conditions shall be extended by a period of time equal to the duration of the Force Majeure event; provided, however, within thirty (30) days after the beginning of any such Force Majeure event, the Delayed Party shall have first notified the other Party of the cause

or causes of such delay and claimed an extension for the reasonably estimated period of the enforced delay.

(b) Definition of Force Majeure. “**Force Majeure**” means events that cause delays in the Delayed Party’s performance of its obligations under this Agreement, or in the satisfaction of a condition to the other Party’s performance under this Agreement, due to causes beyond the Delayed Party’s control and not caused by the acts or omissions of the Delayed Party (excluding, in any case, a Delayed Party’s performance of the payment of money required under the terms of this Agreement), including: acts of nature or of the public enemy; war; invasion; insurrection; riots; any general moratorium in the issuance of governmental or regulatory permits applicable to the Property or the Initial Improvements (but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by Section 9(d)); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between Optionee and its contractors or work performed on behalf of Optionee); inability to obtain materials or reasonably acceptable substitute materials (provided that Optionee has ordered such materials on a timely basis and Optionee is not otherwise at fault for such inability to obtain materials); or any Litigation Force Majeure (provided that the Delayed Party proceeds with due diligence to defend or commence, as applicable, such action or proceeding or take other appropriate measures to resolve any dispute that is the subject of such action or proceeding). The following are excluded from the definition of Force Majeure: (1) Optionee’s failure to secure anticipated financing for the Initial Improvements unless caused by a direct result of some other event of Force Majeure; (2) sea level rise; and (3) any event that does not cause an actual delay.

(c) Definition of Litigation Force Majeure. “**Litigation Force Majeure**” means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party that challenges, (a) the validity of any action taken by the City or State Lands in connection with the Project or any findings upon which any action is predicated, or (b) the failure of any Regulatory Agency to impose conditions to a Regulatory Approval including building permits or the validity of any other Regulatory Approval required in connection with the Project.

Notwithstanding anything to the contrary contained in this Agreement, Litigation Force Majeure excludes any action or proceeding brought by an Affiliate of Optionee, any of Optionee’s members or their Affiliates, any consultant of Optionee, or any other third party assisted by Optionee, directly or indirectly, in such action or proceeding. Performance by a Party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the Party whose performance is delayed has become final and unappealable.

The Parties will each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

(d) Permit Force Majeure. If the Parties are diligently proceeding to obtain necessary Regulatory Approvals for the Project as required hereunder, Force Majeure includes such Party’s inability to obtain Regulatory Approvals in a timely manner. With respect to such event of Force Majeure, time for Close of Escrow will be tolled for a period not to exceed an aggregate period of nine (9) months for delays caused in issuing such permits or other Regulatory Approvals that result in delaying the Close of Escrow.

(e) Limitations on Force Majeure. Under no circumstances shall the delay attributable to an event of Force Majeure or Litigation Force Majeure extend beyond twenty-four (24) months after the start of the event of Force Majeure or Litigation Force Majeure.

10. PROJECT MATERIALS.

Optionee acknowledges its obligations in connection with the Loan Agreement to deliver and/or otherwise assign to MOHCD its rights to any and all copies of studies, applications, reports, permits, plans, architectural drawings, test results, and similar work product regarding the physical condition of the Property, and any existing Construction Documents (“**Project Materials**”) should the Project not be completed. Optionee agrees that Port has the same rights as MOHCD to such documents and that Port may enforce its rights to the same extent and subject to the same conditions as MOHCD, but Port will request the Project Materials only if MOHCD does not request them. Neither Optionee nor any other party providing the Project materials to Port makes any representation or warranty, express or implied, as to the accuracy or completeness of any information contained in the Project Materials, and none of such parties shall have any responsibility or liability for the content and accuracy of such documents or disclosures. The provisions of this Section 10 will survive the expiration or earlier termination of this Agreement.

11. DAMAGE OR DESTRUCTION.

11.1. *After Close of Escrow.* If at any time after the Close of Escrow, a fire or other casualty damages or destroys the Property or any portion thereof, the Ground Lease will govern the obligations of the Parties.

11.2. *Before Close of Escrow.*

(a) If prior to Close of Escrow, the Property suffers any damage from fire or other casualty that would add less than One Hundred Thousand Dollars (\$100,000) to the Development Budget, Optionee agrees that it will consummate the Close of Escrow in accordance with this Agreement. The Schedule of Performance will be adjusted, as necessary, to reflect any additional work necessitated by the fire or other casualty.

(b) If prior to Close of Escrow, the Property suffers any damage from fire or other casualty that would add One Hundred Thousand Dollars (\$100,000) or more to the Development Budget, then Optionee may elect to terminate this Agreement, by written notice to the other Party delivered not less than one hundred twenty (120) days following the event that caused such damage. If Optionee fails to terminate this Agreement within the 120-day period, the Parties will consummate the Close of Escrow and this Agreement will remain in effect. Optionee (or any permitted assignee) will not be entitled to any additional rent credit, abatement or allowance under the Ground Lease as a result of such casualty. The Schedule of Performance will be adjusted, as necessary, to reflect any additional work necessitated by the fire or other casualty.

(c) Following a termination pursuant to this Section 11.2, neither Party will have any further right or obligation hereunder other than those that survive the expiration or earlier termination of this Agreement.

12. REPRESENTATIONS AND WARRANTIES OF OPTIONEE. Optionee represents and warrants as follows as of the Effective Date and as of the date of the Close of Escrow:

(a) Valid Existence; Good Standing. Optionee is a California limited partnership duly organized and validly existing and is in good standing under the laws of the State of California. Optionee has all requisite power and authority to conduct its business as presently conducted. Optionee's managing general partner is a California limited liability company duly organized and validly existing and is in good standing under the laws of the State of California. Optionee's managing general partner has all requisite power and authority to conduct its business as presently conducted. Optionee's administrative general partner is a California limited liability company duly organized and validly existing and is in good standing under the laws of the State of California. Optionee's administrative general partner has all requisite power and authority to conduct its business as presently conducted.

(b) Authority. Optionee has all requisite power and authority to execute and deliver this Agreement, the Lease and any other Transaction Documents to which Optionee is a party and to carry out and perform all of the terms and covenants of the Transaction Documents.

(c) No Limitation on Ability to Perform. Neither Optionee's, articles of formation, limited partnership agreement, nor any of its general partners' formation documents or other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Optionee executing this Agreement, to enter into and perform all of the terms and covenants of the Transaction Documents. Neither Optionee nor any of its general partners, is a party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. Other than the Regulatory Approvals, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Optionee of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Optionee or any of its general partners before any court, governmental agency, or arbitrator that might materially and adversely affect the enforceability of the Transaction Documents to which Optionee and Port are parties or the business, operations, assets or condition of Optionee or any of its general partners executing this Agreement.

(d) Valid Execution. The execution and delivery of the Transaction Documents by Optionee has been duly and validly authorized by all necessary action. The Transaction Documents will be a legal, valid and binding obligation of Optionee, enforceable against Optionee in accordance with their terms once executed.

(e) Defaults. The execution, delivery and performance of the Transaction Documents by Optionee (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Optionee or each of its general partners or by which Optionee's or any of its general partners' assets may be bound or affected, (B) any Law, or (C) the certificate of partnership of Optionee's limited partnership agreement or any of its general partners' formation documents, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Optionee or any of its general partners, except as otherwise contemplated in this Agreement or the Optionee's loan documents with the City relating to the Project.

(f) Meeting Financial Obligations. There is no material adverse change in Optionee's or any of its partners executing this Agreement financial condition and Optionee, and each of its general partners is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and neither Optionee nor any of its general partners, is in default or claimed default under any agreement for borrowed money.

The representations and warranties in this Section shall survive any expiration or earlier termination of this Agreement.

13. TRANSFER; SUBDIVISION; SUBLEASE.

13.1. *Transfer.*

(a) Permitted Transfers. Without the prior written consent of the Port, Optionee may assign its rights and obligations under this Agreement to: (i) any limited liability company in which John Stewart Company or its Affiliate and BRIDGE Housing Corporation are the managing members or partners; or (ii) a limited partnership in which John Stewart Company or its Affiliate and BRIDGE Housing Corporation or its affiliate are the general partners, but in either case, only if Optionee gives Port: (i) prior written notice at least twenty (20) business days before the effective date of the Transfer; and (ii) copies of all documentation evidencing John Stewart Company's relationship with its Affiliate and a copy of the transfer agreement within five (5) days after the actual effective date of the Transfer (a "**Permitted Transfer**"). Port will

have the right to object to a Permitted Transfer on the grounds that the Transfer does not comply with the requirements of this Section 13.1(a).

(b) **Other Transfers.** Except for a Permitted Transfer, Optionee may not Transfer any of its rights under this Agreement or permit a Significant Change to occur, without in each instance obtaining the prior written approval of Port, which approval shall be at the Port's sole discretion.

(c) Any Transfer or Significant Change made in violation of this Section 13.1 is an Optionee Event of Default from and after the time of Transfer or Significant Change, without necessity of Port's giving of notice or passage of time. Consent to any one Transfer or Significant Change will not be a waiver of Port's right to require such consent for each and every Transfer or Significant Change.

13.2. Subdivision; Sublease. With ninety (90) days' prior written notice to Port, Optionee may elect to subdivide the Property into two or more (air space) parcels for purposes of legally dividing the real property (a "Subdivision"). Optionee shall be solely responsible for all required approvals and costs of such Subdivision. As further described in the Ground Lease, Optionee may sublease any subdivided parcel to the entities listed in Section 13.1(a) under the conditions described or, subject to Port's consent in its reasonable discretion, to any other Party. In the event that the Optionee subleases all or a portion of the Property, the Port will provide a nondisturbance agreement in the form agreed by the Parties.

13.3. No Release of Optionee's Obligations. Without Port's written consent in its sole discretion, no Subdivision, Transfer or Significant Change will relieve Optionee or any other Party from any obligations under the Transaction Documents, but any permitted sublessee, assignee or transferee will have the rights of Optionee under this Agreement and may fulfill the obligations of Optionee hereunder on behalf of Optionee.

14. NOTICES.

All notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed properly delivered, given or served to the Parties at the following addresses when (i) mailed by certified mail, postage prepaid, return receipt requested; (ii) sent by express delivery service, charges prepaid with a delivery receipt; or (iii) personally delivered when a delivery receipt is obtained:

Port:

Director, Real Estate & Development
Port of San Francisco
Pier 1
San Francisco, CA 94111

Atten: SWL 322-1 Development Project Manager
Telephone: (415) 274-0400
Facsimile: (415) 274-0495

With a copy to:

Port General Counsel
Port of San Francisco
Pier 1
San Francisco, CA 94111

With a copy to: Mayor's Office of Housing and Community
Development
One Van Ness Avenue, Fifth Floor,
San Francisco, CA 94103
Attn: Director
Telephone: (415) 701-5515
Facsimile: (415) 701-5501

Optionee: 88 Broadway Family LP, a California Limited
Partnership
c/o BRIDGE Housing Corporation
600 California Street, Suite 900
San Francisco, CA 94108
Telephone: 415-989-1111 x7075
Facsimile: 415-498-4898

With a copy to:
JSCO 88 Broadway Family LLC
c/o John Stewart Company
1388 Sutter Street
11th Floor
San Francisco, California, 94109
Attn: Jack Gardner

All notices so delivered, mailed or sent shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable. Either Party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other Party in the manner provided in this Section. Any notice required under this Agreement that is sent by a Party shall be sent to, or contemporaneously copied to, all of the other Party.

15. GENERAL PROVISIONS.

15.1. *Conflict of Interest.* No member, official or employee of the City, including its Port, may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

15.2. *Inspection of Books and Records.* Port, including its Agents, has the right at all reasonable times and from time to time to inspect the books and records of Optionee in a location within San Francisco during regular business hours pertaining to Optionee's compliance with its obligations under this Agreement, provided that Port shall, to the maximum extent allowed by Law, keep confidential any such information which Optionee reasonably and in good faith determines is proprietary and clearly and conspicuously so designates.

15.3. *Time of Performance.*

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

(b) Weekends and Holidays. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to the next business day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each required completion date in the Schedule of Performance.

15.4. Interpretation of Agreement.

(a) Exhibits. Whenever an “**Exhibit**” is referenced, it means an exhibit or attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

(b) Captions. Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term “**including**”, “**include**”, “**such as**” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including California Civil Code Section 1654).

(e) Costs and Expenses. The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) Agreement References. Wherever reference is made to any provision, term or matter “**in this Agreement**,” “**herein**” or “**hereof**” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered section or paragraph of this Agreement or any specific subdivision of this Agreement.

15.5. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the successors and assigns of Port and Optionee, subject to the limitations on assignment set forth in Section 13. Where the term “**Optionee**,” or “**Port**” is used in this Agreement, it means and includes their respective successors and assigns. Whenever this Agreement specifies Port as a party or the holder of the right or obligation to give approvals or consents, if Port or a comparable public body which has succeeded to Port’s rights and obligations no longer exists, then the City (or the State, if applicable) will be deemed to be the successor and assign of Port for purposes of this Agreement.

15.6. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Port and Optionee and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Agreement.

15.7. Real Estate Commissions. Optionee and Port each represents that it engaged no broker, agent or finder in connection with this transaction.

15.8. Counterparts. This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

15.9. Entire Agreement. Except for the Negotiation Agreement, this Agreement, including the Form Ground Lease, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Agreement. No parol evidence of any prior draft of this Agreement, or of any other agreement shall be permitted to contradict or vary the terms of this Agreement.

15.10. Amendment. Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties.

15.11. Governing Law. The Laws of the State of California shall govern the interpretation and enforcement of this Agreement. As part of the consideration for Port's entering into this Agreement, Optionee agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of Port, be litigated in courts having sites within the State of California.

15.12. Extensions by Port. Upon the request of Optionee except as otherwise specifically addressed in this Agreement, Port, acting through its Executive Director, may, by written instrument, extend the time for Optionee's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as it determines appropriate, including the time within which Optionee shall agree to such terms or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Optionee's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement.

15.13. Further Assurances. The Parties agree to execute and acknowledge such other and further documents and take such other reasonable actions as may be necessary or reasonably required to effectuate the terms of this Agreement. Port's Executive Director is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of Port under this Agreement, if the Executive Director determines, in consultation with the City Attorney, that the document is necessary or proper and in Port's best interests. The Executive Director's signature on any such document shall conclusively evidence such a determination by him or her.

15.14. Attorneys' Fees. If either Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement, including Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the 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 City Attorney's Office.

15.15. Relationship of Parties. The subject matter of this Agreement is a private development with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement shall be deemed to render Port a partner in Optionee's business, or joint venturer or member in any joint enterprise with Optionee.

15.16. Severability. If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

15.17. No Waiver. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

15.18. Binding Effect. This Agreement and its terms and conditions shall bind upon and inure to the benefit of the Parties to this Agreement and their respective successors and permitted assigns. By approving this Agreement, the Port Commission approves the Form Ground Lease with the substantive terms contained therein without the need for additional action by the Port Commission; provided, if there are any material changes to the Form Ground Lease that are to the detriment of the Port, as determined by the Port's Executive Director after consultation with the City Attorney, then such material changes will be subject to Port Commission approval before the Ground Lease becomes effective. If, as a result of any Regulatory Approvals, any material changes to the Form Ground Lease are made to the detriment of the Optionee or Port, as determined in their respective sole discretion, then that Party may terminate this Agreement by providing written notice to the other Party prior to Close of Escrow.

15.19. Non-Liability of Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, partner, shareholder, director or agent of City or Optionee will be personally liable to the other Party, its successors and assigns, in the event of any default or breach or for any amount which may become due to either Party, its successors and assigns, or for any obligation of a Party under this Agreement.

15.20. Process for Port Approvals. Unless this Agreement otherwise expressly provides, with respect to the Port's obligations to approve the items set forth below and any amendments thereto, Port's approval shall not be unreasonably withheld or delayed. Except as otherwise noted below, within ten (10) business days following submission of the applicable item or proposed revision thereof by Optionee to Port, Port shall approve or disapprove such submission. If Port disapproves such a submission, Port shall specify the reason for such disapproval. Optionee shall then have ten (10) business days to resubmit the applicable item to Port and the process for review and approval shall continue until such item is approved. Failure of the Port to respond within the time periods set forth in this Section 15.19 shall mean Optionee's request is deemed approved by the Port.

- (a) Financing Plan and Development Budget pursuant to Section 2(b) and Section 5.1(c);
- (b) Commitments and evidence of financing pursuant to Section 2(c);
- (c) Scope of Development or Schedule of Performance pursuant to Section 2(d);

- (d) leasing plan pursuant to Section 5.1(g);
- (e) Management Plan – thirty (30) day review;
- (f) pest management plan pursuant to Section 5.1(n) and
- (g) construction contract pursuant to Section 5.1(m).

16. CITY REQUIREMENTS.

Optionee has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of Section 35 of the Form Ground Lease to the extent applicable, which summarizes special City requirements as of the Effective Date. Optionee acknowledges that City requirements in effect when the Ground Lease or other Transaction Documents are executed will be incorporated into such documents as applicable, and will apply to all contractors, subcontractors, subtenants, and any other Optionee parties, as applicable. City requirements of general applicability will apply to the Project even if not included in the Transaction Documents. Optionee is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at www.sfgov.org.

In addition, the following apply during the Term of this Agreement:

16.1. *Non-Discrimination in City Contracts and Benefits Ordinance.*

(a) **Covenant Not to Discriminate.** In the performance of this Agreement, Optionee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Optionee or any City and County employee working with Optionee, any applicant for employment with Optionee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Optionee in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Optionee shall include in all Subleases and other contracts relating to the Property a non-discrimination clause applicable to such Subtenant or other contractor in substantially the form of Section 16.1(a). In addition, Optionee shall incorporate by reference in all Subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

(c) **Non-Discrimination in Benefits.** Optionee represents that it does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, 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 has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) **CMD Form.** On or prior to the Ground Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

(e) Penalties. Optionee understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Optionee and/or deducted from any payments due Optionee.

16.2. *Sunshine Ordinance.* Optionee understands and agrees that under 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 City hereunder public records subject to public disclosure. Optionee hereby acknowledges that the Port may disclose any records, information and materials submitted to the Port in connection with this Agreement.

16.3. *Prohibition Against Making Contributions to City.* Through its execution of this Agreement, Optionee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Optionee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Optionee further acknowledges that the prohibition on contributions applies to each Optionee; each member of Optionee's board of directors, and Optionee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Optionee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Optionee. Additionally, Optionee acknowledges that Optionee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Optionee further agrees to provide to City the names of each person, entity or committee described above.

16.4. *Conflicts of Interest.* Through its execution of this Agreement, Optionee 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 Optionee becomes aware of any such fact during the term of this Agreement, Optionee shall immediately notify the City.

16.5. *Tropical Hardwood and Virgin Redwood Ban.* The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

17. DEFINITIONS.

"Affiliate" means: (i) a person that Controls or is Controlled by the first entity, or is Controlled by the same person that Controls the first entity; or (ii) if Optionee is a natural person, any designated successor by trust, will, or court order following the first entity's death or incapacity.

"Bi-Weekly Meeting" is defined in Section 4.4(k).

"Burton Act" means the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, providing for the transfer to the City from the State, subject

to specified terms, conditions and reservations, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

“**Close of Escrow**” is defined in Section 3.2.

“**Close of Escrow Deadline**” is defined in Section 3.1.

“**CMD**” means the Contract Monitoring Division of the City’s General Services Agency

“**Consistency Determination**” is defined in Section 2(e).

“**Construction**” means all new construction, replacement, rehabilitation, and demolition occurring on the Property, or where applicable, off-site, pursuant to this Agreement and the Ground Lease. “**Construct**” will have a correlative meaning.

“**Construction Documents**” is defined in Section 4.4(c).

“**Control**” means the direct or indirect ownership of: (a) fifty percent (50%) or more of each class of equity interests in the entity; or (b) fifty percent (50%) or more of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the entity or otherwise has the right to direct or cause the direction of substantially all of the management and policies of the entity.

“**Deliver**” or “**Delivery**” means execution and delivery through Escrow by Port to Optionee, of a leasehold estate in the Property.

“**Development Budget**” means, as part of the Financing Plan, the budget for the Initial Improvements based on the Final Construction Documents. The Development Budget will show a balance of sources and uses of funds that include the total development cost for Construction of the Initial Improvements, including line items for Pre-Development Costs, permits, fees, exactions, architectural and engineering costs, hard costs, other soft costs, financing costs for the Project, and insurance and bonding costs, along with the sources of funds. The Development Budget will be substantially in the form of the anticipated Development Budget attached hereto as *Exhibit F* which has been approved by Port.

“**Effective Date**” is defined in Section 18.

“**Environmental Law**” means any Laws relating to Hazardous Materials (including its handling, release, or remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Property.

“**Expiration Date**” is defined Section 3.1.

“**Exterior Improvements**” means any improvements, furnishings, fixtures, or equipment located in the exterior areas of the Property (whether public access or not and including the roof) and/or located in the public access areas of the buildings, which may include mechanical equipment, photovoltaic panels, satellite dishes, antennae and other communication equipment, public art, bollards, flower baskets, benches, tables, chairs, umbrellas, heaters, railings, gates, trash receptacles, cleats, signs, kiosks, flagpoles, canopies, awnings, landscaping, planter boxes, light poles, lighting fixtures, fountains, ticket booths, bicycle racks, plaques, markers, tents, models, other street furniture, and paving or other surface treatments.

“**favorable Consistency Determination**” means that all findings, approvals or other determinations required by the State Legislation and any other statutes governing the use of SWL 322-1 have been made by the Port Commission and State Lands and they have determined that the permitted uses, consideration to the Port, and other pertinent provisions of this Agreement and the Ground Lease are (1) consistent with the State Legislation and other governing statutes, and (2) do not require the Port to acquire additional land or make a deposit to the Kapiloff Land

Bank Fund pursuant to Section 5 of Assembly Bill 2649, as amended or any other statute governing the use of Port lands.

“Final Mitigated Negative Declaration” or **“FMND”** means the Final Mitigated Negative Declaration issued by the Planning Department on March 9, 2018.

“Financing Plan” means the proposed sources and uses of funds demonstrating a financially feasible project including evidence of Optionee’s ability to meet any debt service obligation(s) attendant thereto.

“Hazardous Materials” means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos containing materials, presumed asbestos containing material, whether or not part of the structure of any existing improvements on the Property, any improvements to be constructed on the Property by or on behalf of Optionee, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

“Indemnified Parties” means City, including all of its boards, commissions, departments, agencies and other subdivisions, including Port, all of the Agents of the City, and their respective heirs, legal representatives, successors and assigns, and each of them.

“Indemnify” means indemnify, protect, defend and hold harmless. **“Indemnification”** and **“Indemnity”** have correlative meanings.

“Initial Improvements” is defined in Recital G and includes all physical construction on the Property (and off-site where so designated in the Scope of Development) and all buildings, structures, fixtures and other improvements erected, built, renovated, rehabilitated, restored, placed, installed or constructed upon or within the Property, as further described in the Scope of Development and elsewhere in this Agreement.

“Invitees” when used with respect to Optionee means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of the Optionee under this Agreement and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

“Laws” means all present and future applicable laws, ordinances, rules, regulations, permits, codes, authorizations, orders and requirements, whether or not foreseen or unforeseen, or in the contemplation of the Parties, which may affect or be applicable to the Property or any part of the Property (including use of the Property and the buildings and improvements on or affixed to the Property), including all consents or approvals (including Regulatory Approvals) required to be obtained from or issued by, and all rules and regulations of, and all building and zoning laws (including the Waterfront Plan) of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Property or any part thereof, the use thereof and of the buildings and improvements thereon; and similarly the phrase **“Law”** shall be construed to mean the same as the above in the singular as well as the plural.

“Lease Memorandum” means the memorandum of the Ground Lease, suitable for recordation in the Official Records and in the form of *Exhibit I*.

“Loss” or **“Losses”** when used with reference to any Indemnity 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 costs and expenses (including reasonable Attorneys’ Fees and Costs,

and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

"MMRP" is defined in Section 4.4(c).

"Official Records" means the official records of the City and County of San Francisco.

"Option Notice" is defined in Section 3.2.

"Payment Advance" is defined in Section 4.9(a).

"Port Statement" is defined in Section 4.9(a).

"Permitted Title Exceptions" is defined in Section 6.3(a) and includes the items set forth in *Exhibit J*.

"Port's Building Permit Costs" means all reasonable costs that Port incurs for services of architects, engineers, building inspectors, and other professional consultants (including City staff and other experts within the City that are paid by Port), construction management services, and legal services (including costs for the City Attorney's Office and outside counsel fees and costs) in connection with the issuance of the building permits for the Initial Improvements. Port's Building Permit Costs include time spent by Port engineering staff (including City staff paid by Port) and engineering consultant costs. Port's Building Permit Costs also include costs related to monitoring Optionee's compliance with the Mitigation Monitoring and Reporting Program; costs of the review of any Construction Documents, architectural design or schematic drawings, plans and specifications; and costs associated with any event of Litigation Force Majeure.

"Project Requirements" means the following: (i) green building requirements, (ii) all applicable Laws, including the Port Building Code, required Regulatory Approvals, the Waterfront Land Use Plan, Environmental Laws, disabled access Laws, Laws regulating construction on the Property, (iii) the Mitigation Measures and Improvements Measures in the MMRP; and (iv) the Equal Opportunity Program.

"Public Trust" means the public trust for commerce, navigation and fisheries, including the statutory trust imposed by the Burton Act.

"Regulatory Agency" and "Regulatory Agencies" means any local, regional, state or federal governmental agency or political subdivision having jurisdiction over the Property, including the United States Environmental Protection Agency, the California Environmental Protection Agency, RWQCB, the Army Corps of Engineers, SFPUC, and Port's Chief Harbor Engineer.

"Regulatory Approval" means any authorization, approval, endorsement, amendment of any existing plans (including the Waterfront Plan), or permit required by any Regulatory Agency to construct or operate the Project including without limitation, building permits issued by Port in its regulatory capacity. Regulatory Approval includes the Consistency Determination, except that the Consistency Determination will be sought by Port.

"Required Element" is defined in Section 4.4(h)(i).

"RWQCB" means the State of California Regional Water Quality Control Board.

"Schematic Design" generally means: (a) perspective drawings sufficient to illustrate the Initial Improvements; (b) a site plan at appropriate scale showing relationships of the Initial Improvements and their respective uses, designating public access areas, open spaces, walkways, loading areas, streets, parking, and adjacent uses--adjacent existing and proposed streets, arcades and structures also should be shown; (c) building plans, floor plans and elevations at appropriate scale and in detail sufficient to describe the Initial Improvements, the general architectural character, and the location and size of uses; and (d) building sections showing all typical cross sections at appropriate scale and height relationships of those areas noted above. Schematic Design for the Initial Improvements include the Schematic Design dated [_____] attached as *Exhibit C* which has been approved by the Port Commission.

“**Scope of Development**” means the narrative document attached hereto as *Exhibit B* describing the Initial Improvements which has been approved by Port.

“**SFPUC**” means the San Francisco Public Utilities Commission.

“**Significant Change**” means any cumulative or aggregate sale, assignment, encumbrance, or other transfer of any percentage of general partnership interests in Optionee except as may be provided in the Optionee's loan documents with MOHCD. Significant Changes are subject to Port's consent in its sole discretion under Section 13.1(a).

“**Title Company**” is defined in Section 6.1.

“**Title Defect**” is defined in Section 6.3(a).

“**Title Defect Cure Period**” is defined in Section 6.3(a).

“**Transaction Documents**” means this Option Agreement including the Form of Ground Lease as well as other related agreements and documents to which the Developer and Port are parties.

“**Transfer**” means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, or other transfer any of Optionee's rights under this Agreement; (b) any Person other than Optionee claims a right under this Agreement; (c) if Optionee is a corporation, limited liability company, partnership or similar entity and is not traded on a nationally recognized security exchange, any change in Control of Optionee (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any assignee, or other Transferee of Optionee's interest in this Agreement is sold, assigned, encumbered, or otherwise Transferred.

“**WDAC**” means the Waterfront Design Advisory Committee authorized under Planning Code Section 240, whose members are appointed by the City and Port, and that is advisory to the Port Commission and to the City's Planning Commission.

“**Waterfront Plan**” means the Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element, for the approximately 7-1/2 miles of waterfront property under Port jurisdiction.

18. EFFECTIVE DATE.

The Effective Date of this Agreement is the last date of execution by the Parties as shown below.

[Signatures appear on following pages]

IN WITNESS WHEREOF, Optionee and the Port have executed this Agreement as of the date first written above.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date: _____

[Signatures Continue on Next Page]

DRAFT

OPTIONEE: **88 BROADWAY FAMILY LP,
a California limited partnership**

By: 88 Broadway Family BRIDGE LLC,
a California limited liability company,
its managing general partner

By: MCB Family Housing, Inc.,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Rebecca Hlebasko, Vice President

Date: _____

By: JSCo 88 Broadway Family LLC,
a California limited liability company,
its administrative general partner

By: John Stewart Company,
a California corporation,
its sole member and manager

By: _____
Jack D. Gardner, President

Date: _____

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

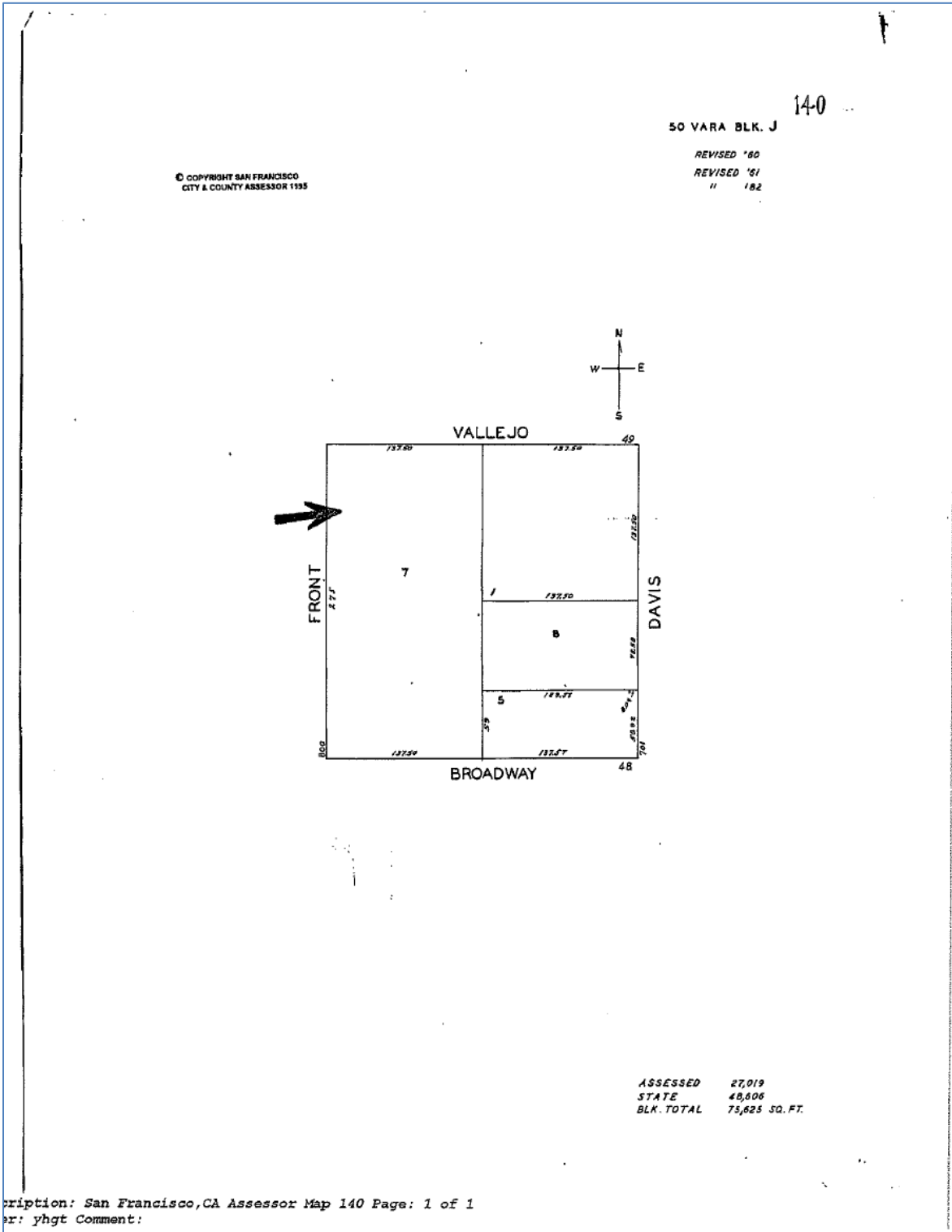
By: _____
Name: Rona H. Sandler
Deputy City Attorney

Agreement Prepared By: Ricky Tijani _____(initial)

Port Commission Resolution No.

EXHIBIT A

PROPERTY MAP



PROPERTY LEGAL DESCRIPTION

[SUBJECT TO REVIEW BY PORT SURVEYOR]

The land referred to in this Agreement is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Beginning at the point of intersection of the Northerly line of Broadway with the Easterly line of Front Street; thence Northerly, along said Easterly line of Front Street, 275.0 feet to the point of intersection of said Easterly line with the Southerly line of Vallejo Street; thence Easterly, along said Southerly line of 137.5 feet to a point; thence Southerly at right angles from said Southerly line and parallel with said Easterly line of Front Street, 275.0 feet to a point in the Northerly line of Broadway; thence Westerly along said Northerly line of 137.5 feet to the point of beginning.

EXCEPTING THEREFROM: "Excepts and reserves to the State of California all subsurface mineral deposits including oil and gas deposits, together with the right of ingress and egress on the properties conveyed to the City for exploration, drilling and excavation of such mineral, oil and gas deposits. Minerals covered in this reservation shall be deemed to include all of the minerals enumerated in Public Resources Code Section 6407. Nothing contained herein, however, shall preclude the City in its operation of the Harbor from moving or removing earth, including sand, gravel and other deposits for purposes of dredging, filling, excavating, bulkheading or any other ordinary port maintenance, construction or reconstruction without charge to the City therefor. The right of ingress and egress in the reservation shall be exercised in such manner and to such extent as not to unreasonably interfere with the property for the purposes for which it has been transferred under the Act." as reserved in the Agreement recorded January 30, 1969, Book B308 page 686 of Official Records.

APN: 007; Block 0140

EXHIBIT B

PROJECT DESCRIPTION/SCOPE OF DEVELOPMENT

88 Broadway is located on Port-owned land that is on the west half of the block bounded by Broadway to the south, Vallejo to the north, Front to the west and Davis to the east.

88 Broadway is an approximately 125-unit family building serving low-income and middle-income families, with Area Median Income (AMI) levels between 30-120%, and may also include 31 Project Based Vouchers for HOPE SF relocatees. The 125 family units will include a mix of 16 junior one-bedrooms, 37 one-bedrooms, 48 two-bedrooms, and 24 three-bedrooms totaling approximately 137,100 gross square feet (gsf) of residential dwelling space. 88 Broadway will include active ground floor uses that will include an approximately 4,500 square foot community-serving retail space, as well as an approximately 4,200 square foot proposed child care center on the ground floor of 88 Broadway totaling approximately 8,700 gsf of nonresidential space. Additionally 88 Broadway will provide a publicly accessible north/south midblock passageway connecting Vallejo and Broadway Streets, as well as publicly accessible pedestrian path to 88 Broadway, accessible from Davis Street.

PROJECT SITE PLAN



EXHIBIT C

SCHEMATIC DESIGN

[Attachment on following page]

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EXHIBIT D

FORM OF GROUND LEASE

[Attachment on following page]

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EXHIBIT E

SCHEDULE OF PERFORMANCE

[Attachment on following page]

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EXHIBIT F**ANTICIPATED DEVELOPMENT BUDGET****SOURCES AND USES SUMMARY**

Permanent Sources	Amount	Terms	Status
MOH	\$37,164,974	55 yrs @ 3.00%	Not Committed
Perm Loan	\$19,733,464	35 yrs @ 5.75%	Not Committed
AHSC	\$0	55 yrs @ 3.00%	Not Committed
AHP	\$1,000,000	N/A	Not Committed
Tax Credit Equity	\$29,027,937	\$.97 per credit	Not Committed
Commercial Condo Financing	\$2,052,890	20 yrs @ 7.00%	Not Committed
GP Equity	\$500,000	N/A	
Deferred Developer Fee	\$1,250,000		
Total	\$90,729,265		

Uses	Amount	Per Unit	Per SF
Acquisition	\$0	\$0	\$0
Hard Costs	\$72,587,731	\$580,702	\$497
Soft Costs	\$13,944,025	\$111,552	\$95
Developer Fee + Syndication	\$4,197,509	\$33,580	\$29
Contingencies for Hard and Soft Costs			
Total	\$90,729,265	\$725,834	\$621

DEVELOPMENT BUDGET

General Development Costs	72,412,731
Architecture & Engineering	3,859,803
Legal	396,847
Marketing	197,450
Appraisal/Market Study	26,500
Title/Audit/Cost Certification	120,000
FF&E	175,000
Permits/Fees	1,922,546
Soft Cost Contingency & Reserves	1,275,577
Carrying Charges & Financing	962,281
Construction Financing Loan Interest/Fees	3,875,895
Bond Cost of Issuance & Perm Loan Fees	423,707
Syndication Costs & Developer Fees	4,197,509
Commercial Development Costs	883,419
TOTAL DEVELOPMENT BUDGET	90,729,265

DRAFT

EXHIBIT G

REAFFIRMATION OF REPRESENTATIONS AND WARRANTIES

Pursuant to Sections 2(g) and 5.1(p) of the Option Agreement between the **CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** (“Port”) and [_____], a [_____] (“Optionee Party”), dated [_____] (“Option Agreement”), Optionee reaffirms to Port that the representations and warranties made by Optionee Party and set forth in Section 12 of the Option Agreement were true and accurate as of the effective date of the Option Agreement and further represents and warrants to Port as of the date below, all of the following:

[Placeholder to Restate R/W]

All capitalized items not defined herein have the meanings give to them in the Option Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Reaffirmation of Representations and Warranties as of the date of the Option Notice/Close of Escrow: [_____] , 20XX].

[INSERT OPTIONEE PARTY]

By: _____
Name: _____
Title: _____



EXHIBIT H

EXPIRATION DATE MEMORANDUM

Landlord: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

Licensee: 88 Broadway Family LP

License Number: License 16358,
License Date: February 6, 2018 for
License Area: SWL 322-1

The Commencement Date of the License is March 29, 2018 and the Expiration Date is hereby established as the Expiration Date of that certain Option Agreement dated April 15, 2018 for reference purposes only between Port and Licensee.

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, operating by and through
the
SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director
Real Estate and Development

Date Signed: _____

Licensee:

88 BROADWAY FAMILY LP,
a California limited partnership

By: 88 Broadway Family BRIDGE LLC,
a California limited liability company,
its managing general partner

By: MCB Family Housing, Inc.,
a California nonprofit public
benefit corporation,
its sole member and manager

By: _____
Rebecca Hlebasko, Vice President

Date: _____

By: JSCo 88 Broadway Family LLC,
a California limited liability company,
its administrative general partner

By: John Stewart Company,
a California corporation,
its sole member and manager

By: _____
Jack D. Gardner, President

EXHIBIT I

LEASE MEMORANDUM

<p>This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383</p> <p>RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO:</p>	<p>FOR RECORDER'S USE ONLY</p>
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[APN: Lot 007, Block 0140]

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this “**Memorandum**”) dated for reference purposes as of _____, _____ is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (the “**Port**”), and 88 Broadway Family LP, a California limited partnership (the “**Tenant**”).

1. **Agreement.** Port and Tenant have entered into a Ground Lease dated as of _____, _____ (the “**Ground Lease**”), under which (a) Port agrees to lease to Tenant the Premises described in **Exhibit A** attached hereto (the “**Site**”), (as may be altered in accordance with the terms of the Ground Lease, the “**Premises**”). Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Ground Lease.
2. **Term.** The initial term of the Ground Lease is fifty-seven (57) years unless the Ground Lease is earlier terminated in accordance with the provisions of the Ground Lease. The initial term may be further extended for eighteen (18) years subject to the provisions of the Ground Lease.
3. **Notice.** The Parties have executed and recorded this Memorandum to give notice of the Ground Lease and their respective rights and obligations under the Ground Lease to all third parties. The Ground Lease is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the Ground Lease, the Ground Lease shall control.
4. **Counterparts.** This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF the Parties hereto have caused this Memorandum of Lease Disposition and Development Agreement to be executed by their duly appointed representatives as of the date first above written.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date Signed: _____

OPTIONEE: **88 BROADWAY FAMILY LP,**
a California limited partnership

By: 88 Broadway Family BRIDGE LLC,
a California limited liability company,
its managing general partner

By: MCB Family Housing, Inc.,
a California nonprofit public benefit corporation,
its sole member and manager

By: _____
Rebecca Hlebasko, Vice President

Date: _____

By: JSCo 88 Broadway Family LLC,
a California limited liability company,
its administrative general partner

By: John Stewart Company,
a California corporation,
its sole member and manager

By: _____
Jack D. Gardner, President

Date: _____

CERTIFICATE OF ACKNOWLEDGMENT

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

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)
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)

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DRAFT

EXHIBIT J

PERMITTED TITLE EXCEPTIONS

No.	Record Date	Instrument No.	Description	Action Required
1	N/A	N/A	Taxes 2017-2018, not yet due or payable	N/A
2	N/A	N/A	Taxes 2016-2017, no tax due	N/A
3	N/A	N/A	Supplemental taxes	N/A
4	12/7/2009	Book 1 of Maps of Assess. & Comm. Fac. Distr., Page 33	Map identifying boundaries of Special Tax District No. 2009-1	N/A
5	N/A	N/A	Conditions, restrictions and limitations contained in legislative grants and by law pertaining to the land.	N/A
6	1/30/1969	Reel B308, Image 686	Agreement relating to transfer of property	N/A