File No. 190682 Committee Item No. 8
Board Item No. 2

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Transportation Committee **Date** December 9, 2019

Board of Supervisors Meeting **Date** 1/7/2020

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Completed by: Erica Major **Date** December 6, 2019
Completed by: Erica Major **Date** December 17, 2019

[Development Agreement - KR Flower Mart, LLC - Flower Mart - 5th and Brannan Streets]

Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the development of an approximately 6.5-acre site located at 5th Street and Brannan Street, with various public benefits including a new on-site or off-site wholesale flower market; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving the receipt and expenditure of funds for an off-site new wholesale flower market as set forth in the Development Agreement, as applicable; approving the development impact fees for the project and waiving certain Planning Code fees and requirements for a temporary flower market; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; and ratifying certain actions taken in connection therewith, as defined herein.

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

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

Section 1. Project Findings.

The Board of Supervisors makes the following findings:

(a) California Government Code Section 65864 et seq. authorizes any city, county,

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or city and county to enter into an agreement for the development of real property within the jurisdiction of the city, county, or city and county.

(b) Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth certain procedures for the processing and approval of development agreements in the City and County of San Francisco (the "City").

(c) KR Flower Mart, LLC, a Delaware limited liability company ("Developer") owns and operates an approximately 6.5-acre site generally along Brannan Street between Fifth and Sixth Streets currently composed of 141,992 square feet of flower market use, along with approximately 4,900 square feet of retail use, and 45,549 square feet of vacant PDR spaces, and surface parking lot areas (the "Project Site").

(d) On June 3, 2019, Developer filed an application with the City's Planning Department for approval of a development agreement relating to the Project Site (the "Development Agreement") under Chapter 56. A copy of the Development Agreement is on file with the Clerk of the Board in File No. 190682. Developer also filed applications with the Department for certain activities described in Exhibit B.1 (the "Flower Mart On-Site Project") and Exhibit B.2 (the "Project Variant") to the Development Agreement (collectively, the "Project").

(e) The Flower Mart On-Site Project is a large multi-phase and mixed-use development that includes office, retail, wholesale, privately-owned public open space, parking, and related uses. Specifically, the Project includes approximately 2,032,165 gross square feet of office uses, 83,459 square feet of retail space (including 10,000 rentable square feet of flower retail space), and a new wholesale flower market consisting of 115,000 rentable square feet of flower vendor space, 769 vehicle parking spaces, 30 loading spaces, 410 Class 1 bicycle parking spaces, 86 Class 2 bicycle parking spaces, and 40,655 square feet of on-site and off-site privately-owned public open space, all as more particularly

described in the Development Agreement. The Project Variant is generally the same as the Project except that the permanent new wholesale flower market would be built at an alternative, off site location. Accordingly, the Project Variant includes approximately 2,061,380 gross square feet of office uses, 90,976 square feet of retail space, 22,690 square feet of child care space (including dedicated outdoor activity area), 632 vehicle parking spaces, 9 loading spaces, 516 Class 1 bicycle parking spaces, and 92 Class 2 bicycle parking spaces (together with the off-site new wholesale flower market), all as more particularly described in the Development Agreement.

(f) The Development Agreement includes a process for the selection of the Flower Mart On-Site Project versus the Project Variant, which begins with an election by the San Francisco Flower Market Tenants' Association (the "Tenant Association"), with the ultimate decision made by the City to ensure that any location requested by the Tenant Association is viable. If the City elects the Flower Mart On-Site Project, Developer will, at no cost to the City or the flower vendors, relocate the vendors to a temporary off-site location, build the new flower market on site, and then move vendors back to the Project Site when the new flower market is completed. If the City selects the Project Variant, Developer will, at no cost to the City or the flower vendors, construct the new off-site flower market and move the vendors to the ~~pay all of the predevelopment costs for~~ new off-site flower market~~, and will subsidize the construction of the new building off-site~~ in accordance with criteria specified in ~~a payment formula attached to~~ the Development Agreement. ~~The payment formula will result in a upfront payment amount (the "New Market Payment"), payable to the City, that is designed to ensure that the new flower market can be built at the off-site location, based on the actual building design or alternatively on specific criteria described in the Development Agreement, using only set flower vendor rents, a Developer rent subsidy, a third party loan, and such additional Developer subsidy as needed to support the third party loan. As Developer will be required to~~

~~pay some or all of standard owner equity at the new location without the benefit of owning the building, this equity portion of the Developer subsidy will be reimbursed without interest, as a subordinated payment made by the building owner after debt and operating expenses are paid, to the extent funds are available.~~

(g) The commitments made to the flower vendors, including the significant rent subsidies through the date of completion of the new flower market and continuing for 15 years thereafter, are also contained in a tri-party agreement between Developer, the San Francisco Flower Mart LLC, and the San Francisco Flower Market Tenants' Association, as amended (the "Tri-Party Agreement").

(h) In addition to the construction of a new wholesale flower market, ~~flower market commitments and the~~ significant jobs, housing, urban revitalization, and economic benefits to the City from the Project, the City has determined that development of the Project under the Development Agreement will provide additional benefits to the public that could not be obtained through application of existing City ordinances, regulations, and policies. Additional public benefits include ~~the dedication of a minimum 14,000 square foot affordable housing site within the boundaries of the Central SoMa, Eastern SoMa or Western SoMa Area Plans, with no developer impact fee credit for such dedication,~~ *protection of the San Francisco wholesale flower market as a vital and historic PDR use,* completion of a subsidized child care center if the Project Variant is built, construction of a San Francisco Filipino Cultural Heritage District gateway marker, additional contributions of $5,100,000 to an affordable housing developer for costs related to the Sunnydale Hub project and $2,000,000 to support street cleaning efforts in the South of Market Area, open space, community space, and workforce commitments, and transportation and other public improvements, all as described in the Development Agreement. The Development Agreement will eliminate uncertainty in the City's land use planning for the Project and secure orderly development of the Project Site.

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(i) The Project is anticipated to generate an annual average of approximately 8,050 construction jobs, an approximately $29.9 million annual increase in general fund revenues to the City and approximately $9.3 million annual increase in non-general fund revenues to the City, and approximately $175.2 million in direct, one-time, construction-related revenue to the City, including ~~$166~~ 211 million in development impact fees and $9.2 million in gross receipts and sales tax revenue.

(j) Concurrently with this Ordinance, the Board is taking a number of actions in furtherance of the Project, as generally described in the Development Agreement, including Exhibit K to the Development Agreement.

Section 2. CEQA Findings.

On July 3, 2019, the Environmental Review Officer ("ERO") issued a Community Plan Exemption ("CPE") and Addendum for the Project, Project Variant, and the Temporary Site pursuant to the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA"). Copies of the CPE and Addendum are on file with the Clerk of the Board of Supervisors in File No. 190681. On July 18, 2019, by Motion No. 20484, the Planning Commission adopted findings pursuant to CEQA and a Mitigation Monitoring and Reporting Program ("MMRP"). This Motion is on file with the Clerk of the Board of Supervisors in File No. 190681. This Board has reviewed the CPE, Addendum, and related documents, and adopts and incorporates by reference as though fully set forth herein the CEQA Findings and the MMRP.

Section 3. General Plan and Planning Code Section 101.1 (b) Findings.

(a) The Board of Supervisors finds that the Development Agreement will serve the public necessity, convenience, and general welfare for the reasons set forth in Planning Commission Resolution No. 20486 and incorporates those reasons herein by reference.

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(b) The Board of Supervisors finds that the Development Agreement is in conformity with the General Plan, as proposed to be amended and when effective, and the eight priority policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission Resolution No. 20486. The Board hereby adopts the findings set forth in Planning Commission Resolution No. 20486 and incorporates those findings herein by reference.

Section 4. Development Agreement.

(a) The Board of Supervisors approves all of the terms and conditions of the Development Agreement, in substantially the form on file with the Clerk of the Board of Supervisors in File No. 190682.

(b) The Board of Supervisors approves and authorizes the execution, delivery, and performance by the City of the Development Agreement as follows: (i) the Director of Planning and (other City officials listed thereon) are authorized to execute and deliver the Development Agreement and consents thereto, and (ii) the Director of Planning and other applicable City officials are authorized to take all actions reasonably necessary or prudent to perform the City's obligations under the Development Agreement in accordance with the terms of the Development Agreement. The Director of Planning, at his or her discretion and in consultation with the City Attorney, is authorized to enter into any additions, amendments, or other modifications to the Development Agreement that the Director of Planning determines are in the best interests of the City and that do not materially increase the obligations or liabilities of the City or materially decrease the benefits to the City as provided in the Development Agreement.

~~(c) The Board of Supervisors authorizes the Controller to accept the New Market Payment and any other payments made by the Developer under the Development Agreement. The City shall hold the New Market Payment for costs relating to the construction~~

~~of the new flower market under the Project Variant. Any payments may be commingled with other funds of the City for purposes of investment and safekeeping, but the City's Controller shall maintain records as part of the City's accounting system to account for all the expenditures and the remaining balance.~~

~~(d) The Board of Supervisors authorizes the City's Controller to make payments, using the funds received from Developer, to the Tenant Association or the Alternative Landlord or their contractors and agents, consistent with the Development Agreement. The City waives or overrides any ordinances or processes that would otherwise prevent the City from making the payments contemplated by this Agreement.~~

Section 5. Development Impact Fees

For the Project, the Board of Supervisors approves the development impacts fees and the use of the fees as set forth in the Development Agreement, and waives any inconsistent provision in Planning Code Article 4. For the construction of a temporary flower market, the Board of Supervisors waives all development impact fee requirements under Planning Code Article 4.

Section 6. City Administrative Code Conformity.

The Development Agreement shall prevail in the event of any conflict between the Development Agreement and Chapter 56, and without limiting the generality of the foregoing clause, for purposes of the Development Agreement only, the provisions of Chapter 56 are waived or its provisions deemed satisfied as follows:

(a) KR Flower Mart, LLC shall constitute a permitted "Applicant/Developer" for purposes of Chapter 56, Section 56.3(b).

(b) The Project comprises approximately 6.5 acres and is the type of large multi-phase and/or mixed-use development contemplated by the City Administrative Code and therefore is satisfies the provisions of Chapter 56, Section 56.3(g).

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(c) The provisions of the Development Agreement, including the attached Workforce Agreement, apply and satisfy the requirements of City Administrative Code Chapter 14B, Section 14B.20 and Chapter 56, Section 56.7(c).

(d) The provisions of the Development Agreement regarding any amendment or termination, including those relating to "Material Change," shall apply in lieu of the provisions of Chapter 56, Section 56.15.

(e) The provisions of Chapter 56, Section 56.20 have been satisfied by the Memorandum of Understanding between Developer and the Mayor's Office of Economic and Workforce Development for the reimbursement of City costs, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 190682.

Section 7. Chapter 56 Waiver; Ratification.

(a) In connection with the Development Agreement, the Board of Supervisors finds that the requirements of Chapter 56, as modified hereby, have been substantially complied with and waives any procedural or other requirements of Chapter 56 if and to the extent that they have not been strictly complied with.

(b) All actions taken by City officials in preparing and submitting the Development Agreement to the Board of Supervisors for review and consideration are hereby ratified and confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken by City officials consistent with this Ordinance.

Section 8. Effective and Operative Date.

This ordinance shall become effective 30 days from the date of passage. This Ordinance shall become operative only on (and no rights or duties are affected until) the later of (a) 30 days from the date of its passage, or (b) the date that Ordinance No. _____

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has become effective. A copy of said Ordinance is on file with the Clerk of the Board of Supervisors in File No. 190681.

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

By: _____
Elizabeth A. Dietrich
Deputy City Attorney
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FILE NO. 190682

REVISED LEGISLATIVE DIGEST

[Development Agreement - KR Flower Mart, LLC - Flower Mart Project - 5th and Brannan Street]

Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the development of an approximately 6.5-acre site located at Fifth and Brannan Streets, with various public benefits including a new on-site or off-site wholesale flower market; making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving the development impact fees for the Project and waiving certain Planning Code fees and requirements for a temporary flower market; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; and ratifying certain actions taken in connection therewith, as defined herein.

Existing Law

California Government Code section 65864 *et seq.* (the Development Agreement Statute") and San Francisco Administrative Code Chapter 56 ("Chapter 56") authorize the City to enter into a development agreement regarding the development of real property.

Background Information

This ordinance would approve a Development Agreement between the City and KR Flower Mart, LLC for the development of a mixed use development on a 6.5-acre site located at Fifth and Brannan Streets, that will include approximately 2,032,165 gross square feet of office uses, 83,459 square feet of retail space (including 10,000 rentable square feet of flower retail space), and a new wholesale flower market consisting of 115,000 rentable square feet of flower vendor space. The project variant is generally the same, except that the permanent new wholesale flower market would be built at an alternative, off site location. The process for determining whether the flower market will be built on site or off site is described in the Development Agreement. This Ordinance also would also adopt environmental findings.

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RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code

Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

FOR PROPERTY AT 5th and BRANNAN STREETS

Block 3778: Lots 1B, 2B, 4, 5, 47 and 48

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this ____ day of _____, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and KR FLOWER MART LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer owns and operates the approximately 295,144 square foot site along Brannan Street between 5th and 6th Streets, on Assessor's Block 3778, Lots 001B, 002B, 004, 005, 047 and 048, composed of the 141,992 square feet of flower market, approximately 4,900 square feet of existing retail uses, 45,549 square feet of vacant PDR space, and surface parking lots, as more particularly described on Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed use development that will include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing approximately: 2,032,165 square feet of office space; 89,459 square feet of retail space; 115,000 rentable square feet of vendor space (including accessory retail space) for a new wholesale

flower market; 30 loading spaces; and 769 parking spaces; all as more particularly described in Exhibit B.1 (the "**Project**") and shown in Exhibit C.1. The exact numbers, design, location and massing listed above may change, in keeping with Planning Department standard practices consistent with the Planning Code.

C. In order to satisfy the tenants' request to have an Permanent Off-Site Option (per Article 3), the Developer is also seeking entitlements for a revised project that replaces the on-site new wholesale flower market with approximately 113,036 square feet of other uses at the Project Site, consisting of a development with approximately: 2,061,380 square feet of office space; 90,976 square feet of retail space; 22,690 square feet of childcare use, including outdoor activity area; 9 loading spaces; and 632 vehicle parking spaces, all as more particularly described in Exhibit B.2 and shown in Exhibit C.2 (the **"Project Variant**"). All references in this Agreement to the "**Project**" shall mean (1) before selection under Article 3, both the Project and the Project Variant, and (2) following selection under Article 3, either the Project or the Project Variant, whichever is selected.

D. As part of the Project, Developer will relocate the existing flower market tenants to an interim facility constructed by Developer at the Temporary Relocation Site before Commencing Construction of the Project. Upon completion of the Project, Developer shall pay to move the flower market tenants back to the Project Site under the Project or to the Permanent Off-Site Facility under the Project Variant, as applicable. Alternatively, in the event the Permanent Off-Site Option is exercised, Developer may skip the Temporary Relocation Site and move the flower market vendors straight to the Permanent Off-Site Facility if the Permanent Off-Site Facility has been completed by the time Developer initially moves the flower market vendors from the Project Site. These commitments by Developer, together with certain rent

schedule commitments for a period of at least 34.5 years, are also made in a tri-party agreement among Developer, Tenant Association, and SFFM, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**").

E. The Project is anticipated to generate an annual average of approximately 8,050 construction jobs during construction and, on completion, an approximately $29.9 million annual increase in general fund revenues to the City and approximately $9.3 million annual increase in non-general fund revenues to the City.

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56. The Parties acknowledge that this Agreement is entered into in consideration of their respective burdens and benefits, including the representations and warranties, in this Agreement. The Parties also acknowledge that this Agreement is entered into to encourage and maintain effective land use planning.

G. As a result of the development of the Project in accordance with this Agreement, the City has determined that additional benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These

additional benefits are essential elements for this Agreement and include development of a new permanent home for the flower market, with subsidized rents, the dedication of a housing parcel, onsite childcare, workforce commitments and certain public improvements as described herein.

H. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), "**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project. Pursuant to Government Code Section 65867.5, this Agreement is a legislative act that is approved in an ordinance by the Board of Supervisors.

I. The Project Site is located in the recently adopted Central SOMA Plan area, which was approved by the Board of Supervisors on November 27, 2018 and December 4, 2018, pursuant to Ordinance Nos. 282-18, 296-18 and 280-18, Board of Supervisors File Nos. 180490, 180184, and 180185, respectively, which among other actions rezoned the Project Site for the CMUO (Central SOMA Mixed-Use Office) and MUR (Mixed Use Residential) zoning districts, and the 270-CS and 160-CS height and bulk districts.

J. The City analyzed the environmental impacts of the development density associated with the Project in the Central SOMA Plan Final Environmental Impact Report (**"Central SOMA FEIR"**), certified by the Planning Commission in Motion No. 20182, on May

10, 2018. Potential development at 2000 Marin Street, as the Temporary Relocation Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report (**"Bayview FEIR**"), which was certified by the San Francisco Redevelopment Agency on March 2, 2006. On July 3, 2019, the Environmental Review Officer (**"ERO"**) issued a Community Plan Exemption ("**CPE**") and Addendum for the Project and the Temporary Relocation Site at 2000 Marin Street, including the mitigation monitoring and reporting program (**"MMRP"**). The CPE were prepared in accordance with CEQA and issued by the Planning Department in Case Nos. 2015-004256ENV. Copies of the Certificate of Determination are on file with the Board of Supervisors in File Nos. 190682 and 190681, and are incorporated herein by reference.

K. On July 18, 2019, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission granted Approvals for the Project and adopted the MMRP, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). The information in the Central SOMA FEIR, Bayview FEIR, and CPE were considered by the City in connection with approval of this Agreement.

L. On _____, 2019, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made

the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2019, the Board adopted Ordinance Nos. [_____] approving this Agreement (File No. 190682) and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2020.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 **"Addendum"** has the meaning set forth in Recital J.

1.2 "**Administrative Code**" means the San Francisco Administrative Code.

1.3 "**Affiliate" or "Affiliates**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "**control**" means the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.4 "**Agreement**" means this Development Agreement, including the Recitals and Exhibits.

1.5 "**Alternative Permanent Site**" means a Viable site, in lieu of the Project Site, for the location of the Permanent Off-Site Facility, pursuant to Section 3 to this Agreement, in the event the Permanent Off-Site Option is exercised.

1.6 "**Alternative Option Period**" has the meaning set forth in Section 3.5.

1.7 "**Annual Review Date**" has the meaning set forth in Section 9.1.

1.8 "**Applicable Laws**" has the meaning set forth in Section 6.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.9 "**Approvals**" means the City approvals and entitlements listed on Exhibit K.

1.10 "**Assignment and Assumption Agreement**" has the meaning set forth in Section 13.2.

1.11 "**As Is Relocation Option**" has the meaning set forth in Section 3.8.1(b).

1.12 "**Associated Community Benefits**" is defined in Section 5.1.

1.13 **"Bayview FEIR"** shall have the meaning set forth in Recital J.

1.14 "**Board of Supervisors**" or "**Board**" means the Board of Supervisors of the City and County of San Francisco.

1.15 "**Building**" means the Market Hall Building, the Blocks Building, or the Gateway Building (or collectively, the "**Buildings**"), as generally described in Exhibit B.

1.16 **"Central SOMA FEIR"** shall have the meaning set forth in Recital J.

1.17 "**Central SOMA Plan**" shall have the meaning set forth in Recital I.

1.18 "**CEQA**" has the meaning set forth in Recital H.

1.19 "**CEQA Findings**" means the CEQA findings made by the Planning Commission and the Board of Supervisors in approving this Agreement.

1.20 "**CEQA Guidelines**" has the meaning set forth in Recital H.

1.21 "**CFD**" means a community facilities district formed over all of the Project Site that is established under the CFD Act in accordance with the Central SOMA Plan.

1.22 "**CFD Act**" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Act, as amended from time to time.

1.23 "**Chapter 56**" has the meaning set forth in Recital F.

1.24 "**City**" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.25 "**City Agency**" or "**City Agencies**" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFFD, SFMTA, SFPUC, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction or discretion of a City department that has not approved or consented to this Agreement in connection with the issuance or denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. The City actions and proceedings

subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

1.26 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

1.27 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including without limitation reasonable attorneys' fees and costs and third party costs relating to the Project, the Temporary Relocation Facility, and the Permanent Off-Site Facility, but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 10.6 when Developer is the prevailing party.

1.28 "**City Parties**" has the meaning set forth in Section 5.6.

1.29 "**City Report**" has the meaning set forth in Section 9.2.2.

1.30 "**City-Wide**" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.31 "**CMA**" is defined in Section 13.1.

1.32 "**Commence Construction**" means the commencement of physical construction of the applicable Building foundation on the Project Site.

1.33 "**Community Benefits**" has the meaning set forth in Section 5.1.

1.34 "**Community Benefits Program**" has the meaning set forth in Section 5.1.

1.35 "**CPE**" has the meaning set forth in Recital J.

1.36 "**Declaration of Restrictions**" has the meaning set forth in Section 3.11.

1.37 **"Default**" has the meaning set forth in Section 10.3.

1.38 "**Design Guidelines**" means the Key Development Site Guidelines adopted as part of the Central SOMA Plan.

1.39 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

1.40 "**Development Agreement Statute**" has the meaning set forth in Recital F, as in effect as of the Effective Date.

1.41 "**DPW**" means the San Francisco Department of Public Works.

1.42 "**Effective Date**" has the meaning set forth in Section 2.1.

1.43 "**Enacting Ordinance**" has the meaning set forth in Recital M.

1.44 "**Excusable Delay**" has the meaning set forth in Section 12.5.2.

1.45 "**Exercise Notice**" has the meaning set forth in Section 3.4.

1.46 **"Existing Flower Market"** means the improvements existing on the Project Site as of Effective Date, excluding the Zappettini Parcel.

1.47 "**Existing Standards**" has the meaning set forth in Section 6.2.

1.48 "**Existing Subtenant**" means each of those existing flower mart tenants who has a sublease for space at the Existing Flower Market as of the Relocation Date. Only Existing Subtenants in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent

Off-Site Facility under the Permanent Off-Site Option.

1.49 "**Existing Uses**" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date.

1.50 "**Extended Alternative Option Period**" has the meaning set forth in Section 3.4.

1.51 "**Federal or State Law Exception**" has the meaning set forth in Section 6.10.1.

1.52 "**Flower Market Obligations**" means Developer's obligations described in Article 3 and in subsection 5.1.1.

1.53 "**Foreclosed Property**" is defined in Section 11.5.

1.54 "**General Plan Consistency Findings**" has the meaning set forth in Recital K.

1.55 "**Gross Floor Area**" has the meaning set forth in Planning Code Section 102 as of the Effective Date.

1.56 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, including offsets for any applicable fee credits, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to the Transportation Sustainability Fee (per Planning Code Section 411A), the Jobs-Housing Linkage Fee (per Planning Code Section 413), Child Care Fee (per Planning Code Section 414), Art Fee (per Planning Code Section 429), School Impact Fee (California Education Code Section 17620), Eastern Neighborhoods Infrastructure Impact Fee (per Planning Code Section 423), or fees,

dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees (including CFD special taxes due under the Central SOMA Plan), SFPUC Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws. A sample calculation of the applicable Impact Fees and Exactions is included in Exhibit P.

1.57 "**Interim Lease**" means a lease entered into by Developer, as tenant, and the owner of the Temporary Relocation Site, for the temporary flower market, consistent with the requirements of the Tri-Party Agreement and this Agreement.

1.58 "**JHL Fee Credit**" has the meaning set forth in Section 6.9.1(a).

1.59 "**Later Approval**" means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, design review approvals, improvement agreements, use permits, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, street space permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.60 "**Law(s)**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" shall refer to any or all Laws as the context may require.

1.61 "**Law Adverse to City**" is defined in Section 6.10.4.

1.62 "**Law Adverse to Developer**" is defined in Section 6.10.4.

1.63 "**Litigation Extension**" has the meaning set forth in Section 12.5.1.

1.64 "**Losses**" has the meaning set forth in Section 5.6.

1.65 "**Master Tenant**" means the direct tenant or subtenant of Developer at any of the Existing Flower Market, the Temporary Relocation Facility, the Permanent Off-Site Facility, or the New Wholesale Flower Market, as applicable.

1.66 "**Material Change**" means any modification that would materially alter the rights, benefits or obligations of the City or Developer under this Agreement that is not consistent with the Central SOMA Plan or that (i) extends the Term, (ii) changes the permitted uses of the Project Site, (iii) decreases the Community Benefits, (iv) increases the maximum height, density, or bulk by more than ten percent (10%) the size of the Project (as considered in its entirety and not with respect to any individual Building but consistent with the Approvals) or changes the parking ratios (other than as permitted under the Central SOMA Plan), or (vi) reduces the applicable rate for the Impact Fees and Exactions.

1.67 "**Mitigation Measures**" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.

1.68 "**MMRP**" means that certain mitigation monitoring and reporting program attached hereto as Exhibit L.

1.69 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site or the Alternative Permanent Site to secure an obligation made by the property owner or holder of a leasehold interest.

1.70 "**Mortgagee**" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.71 "**Municipal Code**" means the San Francisco Municipal Code.

1.72 "**New City Laws**" has the meaning set forth in Section 6.7.

1.73 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market (including 10,000 square feet of accessory retail) to be constructed on the Project Site as part of the Project, as more particularly described in the project description in Exhibit B.1.

1.74 "**Non-City Agency**" means Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement.

1.75 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.76 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.77 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee.

1.78 **"Permanent Off-Site Approvals"** means the Permanent Off-Site Building Approvals and the Permanent Off-Site Entitlement Approvals.

1.79 "**Permanent Off-Site Building Approvals**" means the first site permit or first building permit issued by the City or any City Agency, other than the Approvals, for the Alternative Permanent Site and/or the Permanent Off-Site Facility.

1.80 **"Permanent Off-Site Entitlement Approvals"** means any land use approval or entitlement issued by the City or any City Agency, other than the Approvals, that are necessary for the use of the Permanent Off-Site Facility and the Alternative Permanent Site as a wholesale flower market with ancillary retail uses, including without limitation Planning Commission and/or Planning Department entitlements, Planning Code amendments, and completion of CEQA review.

1.81 "**Permanent Off-Site Facility**" means a permanent flower market facility to be constructed at the Alternative Permanent Site, in lieu of the New Wholesale Flower Market at the Project Site, pursuant to Section 3 and Exhibit F-1 to this Agreement, in the event the Permanent Off-Site Option is exercised, as more particularly set forth in Section 3.7.

1.82 "**Permanent Off-Site Master Lease**" means a lease for the Alternative Permanent Site entered into by Developer, as the landlord, and Master Tenant, as the tenant, for a term of at least 34.5 years and less than 35 years, as approved by the City, after the relocation of the Vendors.

1.83 "**Permanent Off-Site Notice**" has the meaning set forth in Section 3.3.

1.84 "**Permanent Off-Site Option**" means an option whereby in lieu of a New Wholesale Flower Market at the Project Site, a Permanent Off-Site Facility is constructed at the Alternative Permanent Site and leased pursuant to the Permanent Off-Site Master Lease.

1.85 "**Phase**" means either Phase 1(a), Phase 1(b) or Phase 1(c), as applicable.

1.86 "**Phase 1(a)**" means the issuance of a certificate of occupancy and/or final completion for the Blocks Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H. If the Stay Option is exercised, Phase 1(a) will not be deemed complete until all Post-Development Subtenants who have entered into a Post-Development Sublease have been relocated back to the Project as part of Developer's relocation program in accordance with the Tri-Party Agreement.

1.87 "**Phase 1(b)**" means the issuance of a certificate of occupancy and/or final completion for the Market Hall Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.88 "**Phase 1(c)**" means the issuance of a certificate of occupancy and/or final completion for the Gateway Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.89 "**Planning Code**" means the San Francisco Planning Code.

1.90 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.91 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

1.92 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.

1.93 **"Post-Development Subtenant"** means each of those Existing Subtenants and Pre-Development Subtenants who pursuant to the terms of the Tri-Party Agreement enter into

a Post-Development Sublease with the owner or master lessor thereof at the New Wholesale Flower Market.

1.94 **"Post-Development Sublease"** means a lease agreement at the New Wholesale Flower Market between Developer or the master lessor of the New Wholesale Flower Market and each Post-Development Subtenant.

1.95 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who, in accordance with the terms of the Tri-Party Agreement (and the Pre-Development Lease defined therein), entered into a Pre-Development Sublease for space at the Existing Flower Market or the Temporary Relocation Site, as applicable. Only Pre-Development Subtenants that remain in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent Off-Site Facility under the Permanent Off-Site Option.

1.96 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.97 "**Project**" means either the Project or the Project Variant, once determined in accordance with Article 3, together with Developer's rights and obligations under this Agreement.

1.98 **"Project Open Space"** means the privately owned, publicly accessible open space described in Exhibit I.

1.99 "**Project Site**" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

1.100 **"Project Variant"** means the mixed use development project described in Recital C and Exhibit B.2 and the Approvals.

1.101 "**Public Health and Safety Exception**" has the meaning set forth in Section 6.10.1.

1.102 **"Public Improvements"** means the following improvements: (i) new sidewalks and sidewalk amenities at a width and design to be determined by DPW and Planning Department staff in accordance with the Better Streets Plan, Central SOMA Plan, and Planning Code, (ii) curbs on the portions of Brannan, Fifth, Sixth, and Morris Streets adjoining the Project Site as outlined in the drawings attached to the Approvals from the Planning Commission; (iii) off-site public open space improvements under the elevated portion of Interstate-80 between.

1.103 **"Relocation Date"** means the date on which all of the Vendors who wish to be relocated to the Temporary Relocation Facility, or to the Permanent Off-Site Facility, as applicable, are relocated by Developer in accordance with the Tri-Party Agreement.

1.104 "**Relocation Matters**" has the meaning set forth in Section 3.3.

1.105 "**Relocation Option During Litigation Pendency**" has the meaning set forth in Section 3.8.2(d).

1.106 "**Relocation Site Approval**" means land use approvals and Planning Code exceptions applicable to the Temporary Relocation Site at 2000 Marin set forth on Exhibit Q, and any land use approvals, entitlement, or permit, from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Relocation Site located at 2000 Marin by the Existing Subtenants and Pre-Development Subtenants during the construction of the Project.

1.107 "**SFFD**" means the San Francisco Fire Department.

1.108 "**SFFM**" means San Francisco Flower Mart LLC, a California limited liability company.

1.109 "**SFMTA**" means the San Francisco Municipal Transportation Agency.

1.110 "**SFPUC**" means the San Francisco Public Utilities Commission.

1.111 "**SFPUC Capacity Charges**" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

1.112 "**Stay Notice**" has the meaning set forth in Section 3.3.

1.113 "**Stay Option**" means Developer construction of a New Wholesale Flower Market at the Project Site.

1.114 "**Subdivision Code**" means the San Francisco Subdivision Code.

1.115 "**Subdivision Map Act**" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.116 "**Temporary Relocation Facility**" means the temporary flower market facility to be built by Developer (if at all) at no cost to the City or to the flower market Vendors, and meeting the requirements of Exhibit E.

1.117 **"Temporary Relocation Site"** means a Viable site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Relocation Facility. In the event the Stay Option is exercised, the Temporary Relocation Site will be at 2000 Marin so long as no other mutually agreeable Viable temporary site is selected by the Parties and Developer has entered into an Interim Lease for 2000 Marin.

1.118 "**Tenant Association**" means the San Francisco Flower Market Tenants' Association.

1.119 "**Tenant Option Period**" has the meaning set forth in Section 3.3.

1.120 "**Term**" has the meaning set forth in Section 2.2.

1.121 "**Third-Party Challenge**" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals, Later Approvals, the CPE or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

1.122 "**Transfer," "Transferee" and "Transferred Property**" have the meanings set forth in Section 13.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

1.123 "**Transfer Agreement**" means that certain Agreement for Transfer of Real Estate attached as Exhibit S for the transfer of property outside the Project Site from Developer to the City to be used by the City for the development of affordable housing or to fund the development of affordable housing, as may be determined by City.

1.124 "**Transfer Parcel**" means vacant, unimproved land within the Central or Western SoMa Plan Area, not less than 14,000 square feet, identified by Developer and acceptable to MOHCD, for conveyance to the City in accordance with the Transfer Agreement;

1.125 "**Transportation Program**" means the transportation program set forth in Exhibit J.

1.126 "**Tri-Party Agreement**" means that certain Tri-Party Agreement among

Developer, the Tenant Association, and the SFFM, dated as of June 26, 2015, and amended and restated on _____, 2019.

1.127 "**Ultimately Granted**" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the CPE shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the CPE, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the CPE, and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

1.128 "**Vendors**" means the Existing Subtenants and Pre-Development Subtenants that wish to be relocated to the Temporary Relocation Facility or the Permanent Off-Site Facility, as the context requires, in accordance with the Tri-Party Agreement and either the Pre-Development Master Lease or Permanent Off-Site Master Lease, as applicable.

1.129 "**Vested Elements**" has the meaning set forth in Section 6.1.

1.130 "**Viable**" has the meaning set forth in Section 3.7 with respect to Permanent Off-Site Facility. For a Temporary Relocation Site, "Viable" means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary retail uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can

accommodate the design and specifications set forth in Exhibit E for the Temporary Relocation Facility; (iv) the site is owned by Developer or under an Interim Lease with Developer; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit E for the Temporary Relocation Facility, or on which such a building could be constructed by Developer.

1.131 "**Workforce Agreement**" means the Workforce Agreement attached hereto as Exhibit O.

1.132 "**Zappettini Parcel**" means Assessor's Lots 047 and 048 on Block 3778.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative.

2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter (the "**Initial Term**"), unless extended or earlier terminated as provided herein, provided however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to terminate this Agreement with respect to the first Phase upon completion of the first Phase, including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the first Phase during the Initial Term and thereafter continues to diligently prosecute the first Phase to completion, and is not in Default (or has cured a Default pursuant to Section 10.3) under this Agreement between the date of exercise and the date the Initial Term expires, then Developer shall have the right to extend the term of this Agreement for an additional five (5) years (the "**Extended Term**") by delivering to the City, at

any time during the last year of the Initial Term, a notice of extension. The 5-year extension shall be automatic upon Developer's delivery of the extension notice unless Developer is in Default (not including a Default that was cured pursuant to Section 10.3) at the time Developer sends the notice or before the start of the Extended Term, in which case the City may reject the notice by written notice of rejection to Developer. The term of this Agreement (the "**Term**") shall mean the Initial Term plus, if applicable, the Extended Term. The performance period or the term for any Approval or Later Approval shall be for the longer of the Term or the performance period or term otherwise applicable to such Approval or Later Approval. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2.3 Phasing. Developer anticipates completing Phase 1(a) first, before Phase 1(b) or Phase 1(c); however, Developer may alter the anticipated phasing, including completion of multiple Phases simultaneously, so long as the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) described in Exhibit H are completed prior to Developer's receipt of the first certificate of occupancy for any Phase or portion thereof.

3. TEMPORARY RELOCATION SITE AND PERMANENT OFF-SITE FACILITY

3.1 Temporary Relocation Site. Before Developer may begin demolition on the portion of the Project Site other than the Zappettini Parcel, Developer shall (a) obtain the exclusive right to occupy (based on an Interim Lease or ownership interest) improved or unimproved real property for use of the Temporary Relocation Site, consistent with the requirements of the Tri-Party Agreement and this Agreement, (b) complete the Temporary Relocation Facility in accordance with the specifications set forth in Exhibit E, and (c) move the

Vendors that occupy the Existing Flower Market as of the Relocation Date and wish to be relocated to the Temporary Relocation Facility at no cost to the Vendors in accordance with the Tri-Party Agreement. Developer shall ensure that the Vendors have the continuing right to occupy the Temporary Relocation Facility under the Interim Lease, on the same terms of their then-existing subleases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than six (6) years, including any extension options, from the Interim Lease commencement date; provided the City may agree to a shorter term if the City determines that less time is needed for the completion of construction of the New Wholesale Flower Market or the Permanent Off-Site Facility, whichever is the case. Notwithstanding the foregoing, Developer may skip the Temporary Relocation Facility and move the Vendors straight to the Alternative Permanent Site if the Permanent Off-Site Option is selected when the Permanent Off-Site Facility at the Alternative Permanent Site is complete.

3.2 Permanent Off-Site Option or Stay Option. As set forth in this Article 3, the City shall elect either the Permanent Off-Site Option or the Stay Option. Following the City's election, Developer shall either (i) complete the New Wholesale Flower Market at the Project Site under the Stay Option, or (ii) complete the Permanent Off-Site Facility at the Alternative Permanent Site under the Permanent Off-Site Option.

3.3 Tenant Option Period. Tenant Association, acting through its counsel, will send to the City, with a copy to Developer, a notice requesting that the City proceed with the Stay Option in the form attached as Exhibit G-2 (the "**Stay Notice**") or the Permanent Off-Site Option in the form attached as Exhibit G-3 (the "**Permanent Off-Site Notice**") on or before thirty (30) days after the Effective Date ("**Tenant Option Period**"). The Stay Notice or the Permanent Off-Site Notice shall be sent by the Tenant Association's counsel, confirming that the Tenant

Association has affirmatively voted and approved, at a duly noticed and held election in accordance with the Tenant Association's bylaws to choose either the Stay Option or the Permanent Off-Site Option, and shall include, substantially in the form and content in the "Tenant Association Release and Indemnity" included in Exhibits G-2 and G-3, (1) a release of any claims by the Tenant Association against the City regarding this Agreement, the Tri-Party Agreement and any other related documents, the Temporary Relocation Site, New Wholesale Flower Market, the Alternative Permanent Site, and the relocation of Vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (2) a release of any claims by the Tenant Association against Developer for the Relocation Matters, but excluding all of Developer's prospective obligations under this Agreement and any other agreement between the Tenant Association and Developer; and (3) an indemnity by the Tenant Association, in favor of the City and Developer, for any claims made by any flower market vendor challenging any of the Relocation Matters.

3.4 Stay Option Exercise. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Tenant Option Period, the City will send the Exercise Notice in the form attached as Exhibit G-1 (the "**Exercise Notice**") to Developer within five business (5) days after receipt of the Stay Notice, electing the Stay Option if, on before the date that is sixty (60) days after the expiration of the Tenant Option Period ("**Alternative Option Period**"), which may be extended at Developer's request by an additional thirty (30) days or longer ("**Extended Alternative Option Period**"), Developer delivers to the City, with a copy to the Tenant Association, an executed Interim Lease for the Temporary Relocation Facility or proof of Temporary Relocation Site ownership. If the Stay Option is exercised the Permanent Off-Site

Option shall terminate and be no further force or effect. Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.

3.5 Permanent Off-Site Option Exercise. If the Tenant Association elects the Permanent Off-Site Option and sends the Permanent Off-Site Notice to the City before the end of the Tenant Option Period, the City shall exercise the Permanent Off-Site Option if, on or before the expiration of the Alternative Option Period or the Extended Alternative Option Period, as applicable, Developer delivers to the City, with a copy to the Tenant Association, preliminary conceptual plans for a Viable location in San Francisco for the Permanent Off-Site Facility, and the City agrees that the proposed Alternative Permanent Site is Viable. If the Developer does not deliver the above-mentioned conceptual plans in a timely manner or if the City does not agree that the Alternative Permanent Site is Viable, the Extended Alternative Option Period is extended until such time when the plans are delivered to the City or the City agrees that the Alternative Permanent Site is Viable, as applicable. The City shall exercise the Permanent Off-Site Option by delivery of the Exercise Notice to Developer in the form attached as Exhibit G-1 within five (5) business days after receipt of the above-mentioned information from Developer.

3.6 Tenant Failure to Exercise; Final City Election. If the City does not receive the Permanent Off-Site Notice or the Stay Notice before the end of the Tenant Option Period, the City has the right, in its sole discretion, to elect either the Permanent Off-Site Option or the Stay Option based upon all of the information available to it. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within fifteen (15) days after the Alternative Option Period or the Extended Alternative Option Period, as applicable. If the City fails to send the Exercise Notice by the end of such fifteen (15) day period,

then Developer shall have the right to choose between the Stay Option and the Permanent Off-Site Option.

3.7 Permanent Off-Site Facility Construction. The Permanent Off-Site Option is designed to provide for the renovation of existing building(s) and/or construction of new building(s) in order to create a permanent wholesale flower market at an Alternative Permanent Site by Developer (the "**Permanent Off-Site Facility**"). The Permanent Off-Site Facility constructed by Developer shall be on a Viable Alternative Permanent Site. "**Viable**" for purposes of an Alternative Permanent Site means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is not a publicly owned site; (iii) the site is mutually agreeable to Developer and Tenant Association; (iv) the site is either owned by Developer or leased by Developer for a term of at least 34.5 years but less than 35 years, as approved by the City; and (v) any lienholder with an interest in the site superior to the Permanent Off-Site Master Lease has provided reasonable non-disturbance protections to the Master Tenant and to any subtenants under the Permanent Off-Site Master Lease.

3.8 Completion of Design and Construction Documents. Following exercise of the Permanent Off-Site Option, Developer shall complete design and construction documents for the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease, submit applications for the Permanent Off-Site Approvals to the City, and shall construct the Permanent Off-Site Facility in accordance with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease.

3.8.1 If the Permanent Off-Site Option is exercised and any of the following circumstances occur: (i) the Permanent Off-Site Entitlement Approvals are not initially granted within the approval deadlines for environmental determinations specified

by Section 1(a) of Executive Directive No. 17-02 issued by Mayor Edwin M. Lee starting from the date of receipt of Developer's complete response to the first Notice of Planning Department Requirements issued by the Planning Department, subject to a 60-day cure period for the City (such period to commence upon written notice from Developer to the City and SFFM) to initially grant such Permanent Off-Site Entitlement Approvals and an extension period of up to one hundred twenty (120) days in the event that an administrative appeal is filed challenging the Permanent Off-Site Entitlement Approvals, and provided that in no case shall the approval time period be less than nine (9) months; (ii) the Permanent Off-Site Building Approvals are not finally granted within six (6) months starting from later to occur of the date the Permanent Off-Site Entitlement Approvals are initially granted or the date of acceptance by the City of a complete application for Developer's first site permit or first building permit for the Alternative Permanent Site, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the City to finally grant such Permanent Off-Site Building Approvals and subject to an extension for the period of any appeal of the Permanent Off-Site Building Approvals; provided that the City agrees that it will process the Permanent Off-Site Building Approvals in parallel with the pendency of the Permanent Off-Site Entitlement Approvals in accordance with its standard practices; (iii) an administrative appeal or judicial challenge is filed by Tenant Association, SFFM, or any vendor at the Existing Flower Market challenging the Permanent Off-Site Approvals, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for such parties to withdraw the administrative appeal(s) or expunge judicial challenge(s); or (iv) a judicial challenge is filed by any party

challenging the Alternative Permanent Site Approvals for the Permanent Off-Site Facility that results in the issuance of an injunction prohibiting the issuance of building permits, commencement of construction, and/or occupancy of the Permanent Off-Site Facility pursuant to the Permanent Off-Site Approvals, subject to a 120-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the injunction to be lifted, then all of the following shall apply:

(a) Developer may terminate the Pre-Development Lease by delivering six (6) months prior written notice to SFFM, with a copy to the City, and notwithstanding Section 3.1 requirements regarding commencement of demolition on the Project Site to the contrary, upon the Pre-Development Lease termination Developer may begin demolition of the Project Site and construction of the Project; and

(b) If Developer terminates the Pre-Development Lease, then upon delivery of Developer's termination notice pursuant to Section 3.8.1(a), Developer shall provide SFFM a right to relocate to the Permanent Off-Site Facility pursuant to the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent Off-Site Facility in an "as is" condition ("**As Is Relocation Option**"), which means the condition existing at the Alternative Permanent Site as of SFFM's exercise of the As Is Relocation Option; and

(c) Within 60 days of the receipt of Developer's termination notice, SFFM shall either: (i) accept the As Is Relocation Option, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent

Off-Site Facility in an "as is" condition per Section 3.8.1(b), and Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000) for any tenant improvements SFFM elects to complete to the Permanent Off-Site Facility; or (ii) reject, or fail to timely exercise, the As Is Relocation Option, in which case upon the effective date for the termination of the Pre-Development Lease, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years but less than 35 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco; and

(d) In the cases described in Section 3.8.1 (i), (ii), or (iv) above, then in addition to its choice of remedies described in the foregoing sentence and despite termination of the Pre-Development Lease, in lieu of the initial payment of $15,000,000, SFFM may choose to require Developer to diligently pursue the Permanent Off-Site Approvals and complete construction of the Permanent Off-Site Facility consistent with Exhibit F-1 and the Permanent Off-Site Master Lease for a period of

twenty-four (24) months after SFFM's election, and if completion (i) occurs by the end of such period then upon completion Developer shall relocate all Vendors who wish to be relocated to the Permanent Off-Site Facility pursuant to the Permanent Off-Site Master Lease, or (ii) does not occur by the end of such period then Developer shall pay $15,000,000 to SFFM upon expiration of such period.

3.8.2 In the event that a filing and pendency of a judicial challenge on the Permanent Off-Site Approvals exists and was filed by a party other than Tenant Association, SFFM, or any vendor at the Existing Flower Market, and no injunction is issued preventing the issuance of the Permanent Off-Site Approvals, then during the pendency of such challenge Developer may not effect termination of the Pre-Development Lease prior to the conclusion of such challenge and may either wait for resolution of the challenge, or may proceed with the construction of the Permanent Off-Site Facility consistent with the Permanent Off-Site Approvals and Exhibit F-1 in which case all of the following shall apply:

(a) Unless prohibited by injunction, City Agencies shall not stop the processing or issuance of building permits or approvals due to such judicial challenge and, provided that Developer obtains any necessary Later Approvals, shall allow development of the Permanent Off-Site Facility to proceed consistent with the Permanent Off-Site Approvals; and

(b) Developer shall give SFFM a right to relocate to the Permanent Off-Site Facility after Developer's completion of the Permanent Off-Site Facility in accordance with Exhibit F-1 and pursuant to the Permanent Off-Site Approvals ("**Relocation Option During Litigation Pendency**"); and

(c) Within 60 days of its receipt of Developer's Relocation Option During Litigation Pendency notice, SFFM shall either: (i) accept the Relocation Option During Litigation Pendency, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for SFFM acceptance of any limitations or restrictions (whether occupancy or improvement related) which may be imposed by the verdict in the judicial challenge (subject to SFFM's right to pursue any approvals or other authorizations to eliminate any compliance issues established by such a verdict), in which case Developer shall complete construction of the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1, and upon the Relocation Date the Pre-Development Lease shall terminate; or (ii) reject or fail to timely exercise the Relocation Option During Litigation Pendency, in which case the Pre-Development Lease shall terminate no less than six (6) months after delivery of the Relocation Option During Litigation Pendency notice, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years but less

than 35 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco.

3.8.3 In the event that the issuance of any element of the Permanent Off-Site Approvals is delayed as a result of (i) Developer's failure to provide requested additional information or materials from City Agencies or to respond to City Agencies in a prompt and expeditious manner, or (ii) the filing or pendency of an administrative appeal or judicial challenge to any of the Permanent Off-Site Approvals by Developer or its Affiliate, then the corresponding period for the affected Permanent Off-Site Approval shall be extended by the length of such delay.

3.9 City Decisions. Except where otherwise noted, all discretionary decisions relating to City actions under this Article 3 shall be made jointly by the Planning Director and the OEWD Director of Development. The Planning Director and the OEWD Director of Development will consult other City officials as they deem appropriate.

3.10 No City Liability. Following exercise of the Permanent Off-Site Option, OEWD and Planning staff shall use good faith efforts to assist Developer with the development of the Permanent Off-Site Facility at the Alternative Permanent Site. Following exercise of the Stay Option, OEWD and Planning staff shall use good faith efforts to monitor and enforce Developer's obligations to build the New Wholesale Flower Market at the Project Site. But nothing in this Agreement shall create any City liability to Developer, to the Tenant Association, to SFFM, or to any flower market vendor relating to the New Wholesale Flower Market, the Permanent Off-Site Facility, or to the Relocation Matters. All interested persons are given notice, and understand and agree, that completion of the New Wholesale Flower Market or the Permanent Off-Site Facility will likely involve many challenges, and that no particular outcome can be guaranteed. By

entering into this Agreement, the City is not guarantying the successful completion of the replacement market or any other result. The City would not be willing to enter into this Agreement without this provision. Without limiting Developer's indemnity obligations in this Agreement, if and to the extent that City is required to expend any funds or staff time defending this Agreement or any discretionary decisions made by the City related to this Article 3 or the Relocation Matters from a claim made by the Tenant Association or any flower market vendor, such funds and the costs of such staff time shall be included in City Costs.

3.11 Tri-Party Agreement; Declaration of Restrictions. Developer shall comply with its key obligations under the Tri-Party Agreement, including compliance with the rent schedule provided in Exhibit D and other key obligations summarized in Exhibit D. If the Permanent Off-Site Option is exercised, then prior to the earlier to occur of (i) issuance of the first certificate of occupancy for any portion of the Project (provided that SFFM has not rejected or failed to timely exercise either the As Is Relocation Option or the Relocation Option during Litigation Pendency pursuant to Section 3.8.1 or Section 3.8.2, in which case no Declaration of Restrictions shall be recorded against the Alternative Permanent Site), or (ii) commencement of the term of the Permanent Off-Site Master Lease, Developer shall record a Declaration of Restrictions (the "**Declaration of Restrictions**") against the Alternative Permanent Site consistent with the form of document attached in Exhibit D-1 and revised as appropriate with such terms and conditions relating to this Agreement, the Permanent Off-Site Master Lease, and the Alternative Permanent Site, as the City may reasonably require. The term of the Declaration of Restrictions shall end upon termination of the Permanent Off-Site Master Lease and any Deemed Consent Subleases (as defined in the Permanent Off-Site Master Lease), and upon such termination the Declaration of Restrictions shall no longer affect the Alternative Permanent Site.

The City requires recordation of the Declaration of Restrictions to assure that Developer's commitments to the rent subsidies pursuant to the Permanent Off-Site Master Lease and its provision of the public benefit of a continued viable wholesale flower market in San Francisco are enforced. Developer's breach of the obligations described in this Section 3.11, Exhibit D, or in the Declaration of Restrictions, following the notice and cure periods set forth in Section 10.3, shall be a material breach of this Agreement. Developer will provide the City with any information it requests relating to the Declaration of Restrictions, the Alternative Permanent Site, the Permanent Off-Site Master Lease, and the Permanent Off-Site Facility in a timely manner, including without limitation information customarily requested by the City's Assessor pursuant to California Revenue & Taxation Code, Sections 71, 441, and 470 and the right to audit revenues and expenditures relating to the Alternative Permanent Site and the Permanent Off-Site Facility. The Declaration of Restrictions shall not be effective until at least one day after the Lease Commencement Date (as defined in the Permanent Off-Site Master Lease). The provisions of this Section 3.11 shall survive the expiration of this Agreement.

3.12 Joint Project Design Review. If the Permanent Off-Site Option is exercised, then Developer will establish a Joint Project Design Review Committee to oversee the design standard of the Permanent Off-Site Facility and to ensure its consistency with the specifications set forth in Exhibit F-1. The Joint Project Design Review Committee will have five members, comprised of (i) the OEWD Director of Development or his or her designee, (ii) the Director of Planning or his or her designee, (iii) a SFFM representative, (iv) the project architect, and (v) a Developer representative. The Joint Project Design Review Committee will be chaired by the OEWD Director of Development and will meet monthly, unless the chair determines otherwise, to discuss and attempt in good faith to resolve any disputes regarding the design

standard and consistency with the specifications set forth in Exhibit F-1. If any disputes regarding the design standard and consistency with the specifications cannot be resolved among the members of the Joint Project Design Review Committee, such disputes shall be resolved in the sole discretion of the OEWD Director of Development, in consultation with the Planning Director. Developer agrees to abide by the determination of the OEWD Director of Development, and any challenge to such determination shall be a material breach of this Agreement. In addition to the regular meetings described above, Developer shall not restrict communication among the project architect and SFFM representatives, but shall instead direct the project architect to engage in regular formal and informal consultation with SFFM representatives in such a manner as is reasonably necessary to facilitate meaningful input from SFFM.

4. GENERAL RIGHTS AND OBLIGATIONS

4.1 Project and Project Variant's Compliance with Certain Design Requirements. Concurrently with the approval of this Agreement, certain Planning Code Text Amendments applicable to the Project were approved by the Board of Supervisors, as listed in Exhibit R.

4.2 Development of the Project. Developer shall have the vested right to develop the Project and the Temporary Relocation Facility in accordance with and subject to the provisions of this Agreement, the Approvals, Later Approvals, and Relocation Site Approvals with respect to 2000 Marin, and the City shall consider and process all Later Approvals for development of the Project and the Temporary Relocation Facility at the Temporary Relocation Site, in accordance with and subject to the provisions of this Agreement. The Parties acknowledge (i) that immediately before the approval of this Agreement, the City approved and granted the Approvals for the Project as listed in Exhibit K, and (ii) that Developer may proceed

in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals, as needed. In the event the Permanent Off-Site Option is elected, Developer may re-evaluate the design of the Project Variant and pursue modifications of the Approvals including alterations to the design, massing, location and overall configuration of the Project Variant, but not including an increase to the maximum square footage or shadow cast by the Project Variant when considered in its entirety. Changes to the Project Variant or Project that are not Material Changes do not require an amendment to this Agreement, and will be processed by the City in accordance with Section 6.4. Provided that Developer obtains any required Later Approvals and any Non-City Approvals and so long as other conditions to the issuance of demolition permits, including Section 3.1, are met, the City will not withhold issuance of permits for demolition, shoring, and below-grade improvements, including but not limited to the basement and parking garage areas, for the Project Site during the pendency of modifications to the Approvals.

4.3 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement.

4.4 Community Facility Districts. The City intends to form a CFD under the CFD Act to finance or seek reimbursement of certain costs as set forth in the SOMA Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the CFDs or other charges set forth in the Central SOMA Plan, or the issuance of additional bonds or other financing secured by CFD special taxes or the application of bond proceeds consistent with

the SOMA Plan. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Central SOMA Plan fees or the CFD special taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in any sale agreement or lease for all or part of the Project Site.

4.5 Transfer Parcel. Before the issuance of the first construction document for the Project, the City, acting through MOHCD, and Developer shall enter into the Transfer Agreement, substantially in the form attached as Exhibit S, for the Transfer Parcel proposed by Developer and approved by MOHCD. Developer shall convey the Transfer Parcel to the City in accordance with the Transfer Agreement on or before issuance of the first certificate of occupancy for any portion of the Project's first building. The City shall use the Transfer Parcel to develop affordable housing; provided if the City decides after acceptance that it cannot develop affordable housing on the Transfer Parcel, the City may sell the Transfer Parcel and use the net sales proceeds for affordable housing within the boundaries of Central SoMa, Eastern SoMa or Western SoMa Area Plans.

5. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

5.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 5 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of

Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is an essential element to this Agreement and is tied to a specific phase of the Project, as described in the Phasing Plan or elsewhere in this Agreement (with each Phase, an "**Associated Community Benefit**"). Time is of the essence with respect to the completion of the Community Benefits.

5.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefit Programs**"):

(a) the construction and development of the New Wholesale Flower Market on the Project Site or alternatively, if the Permanent Off-Site Option is exercised, the construction and development of the Permanent Off-Site Facility at the Alternative Permanent Site in accordance with Article 3;

(b) the rent subsidies per the Tri-Party Agreement, in accordance with the rent schedule included in Exhibit D and the Declaration of Restrictions attached as Exhibit D-1;

(c) the relocation of the Existing Tenants and Pre-Development Subtenants to the Temporary Relocation Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or to the Alternative Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party Agreement, including the requirement that all Existing Tenants and Pre-Development Subtenants

shall be moved together at one time (the collective obligations in subparagraphs (a) through (c) shall be referred to as the "**Flower Market Obligations**");

(d) the Workforce Program, as described in Exhibit O;

(e) the Project Open Space and Public Improvements, as described in Exhibit I;

(f) the Transportation Demand Management Program attached as Exhibit J;

(g) conveyance of the Transfer Parcel to the City, in accordance with the Transfer Agreement, at no cost to City;

(h) under the Project Variant, Developer shall construct a subsidized child care center in Phase 1(a), consisting of approximately 23,000 square feet in accordance with the Approvals, for lease to a qualified non-profit child care operator for ten (10) years at a cost not exceeding landlord's actual costs for operating expenses;

(i) the payment of $5 million to Mercy Housing California, to pay for costs related to the Sunnydale Hub project, on or before the issuance of the first construction document for the Project; and

(j) the payment of $200,000 within sixty (60) days following the Effective Date, and each anniversary thereafter annually for a period of ten (10) years (i.e. a total of $2,000,000), to a fund designated by the City's Controller in consultation with the City's District 6 Supervisor to support pressure washing and/or steam cleaning of sidewalks and street cleaning efforts in SoMa, as designated by the District 6 Supervisor in consultation with the City's Department of Public Works.

5.1.2 Conditions to Performance of Community Benefits.

Developer's obligation to perform each Associated Community Benefit is expressly conditioned upon each and all of the following conditions precedent:

(a) All Approvals and Later Approvals for the applicable Phase to which the Associated Community Benefit is tied shall have been Ultimately Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and Relocation Site Approvals with respect to 2000 Marin, if applicable) have not been obtained or Ultimately Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit with a Phase, the City may withhold a certificate of occupancy for the Building in that Phase until the required Associated Community Benefit is completed or Developer has provided the City with adequate security for completion of such Associated Community Benefit (*e.g.,* a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney); and

(b) Developer shall have Commenced Construction of the Building in the applicable Phase to which the Associated Community Benefit applies.

5.2 No Additional CEQA Review Required; Reliance on CPE and Addendum for Later Approvals. The Parties acknowledge that the CPE and Addendum prepared for the Project and 2000 Marin as the Temporary Relocation Site, respectively, complies with CEQA. The Parties further acknowledge that (a) the CPE and Addendum contain a thorough environmental analysis of the Project, including the Temporary Relocation Site (with respect to 2000 Marin), and demonstrate that the Project's impacts were previously analyzed in the Central

SOMA FEIR and the Addendum, as the case may be; (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the CPE and Addendum, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with the Temporary Relocation Site or a change in the location of the Temporary Relocation Site, the Permanent Site, affordable housing dedication site, or any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

5.3.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all mitigation measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the CPE and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address

significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

5.3 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

5.4 City Cost Recovery.

5.4.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 6.7.

5.4.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

5.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty

(60) days following receipt of a written invoice complying with Section 5.5.4 from the City.

5.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 5.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

5.4.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

5.5 Prevailing Wages. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720 - 1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all persons performing labor in the construction of Public Improvements under this Agreement will be: (1) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), and (2) provided the same hours, working conditions, and benefits as provided for similar work performed in San Francisco County in Administrative Code section 6.22(f). Developer further agrees to employ Apprentices on the Public Improvement work in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing the Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. City's Office of Labor Standards Enforcement ("**OLSE**") enforces labor laws,

and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

5.6 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under

applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

6. VESTING AND CITY OBLIGATIONS

6.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Accordingly, the City in granting the Approvals and vesting them through this Agreement is limiting its future discretion with respect to Later Approvals and Relocation Site Approvals to the extent they include elements that were approved as part earlier Approvals. The criteria for City review and approval of Later Approvals is set forth in Section 6.3. Consequently, the City shall not use its discretionary authority in considering and approving an application for Later Approvals or Relocation Site Approvals with respect to 2000 Marin to change the policy decisions reflected by the Approvals or otherwise to prevent or to delay development of the Project or the Project Variant as set forth in the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses,

height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access and parking (including parking ratios), and the Prop. M allocation made for the Project on the Effective Date (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements), and subject to modification of the Project Variant in accordance with any Later Approval. The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals and Relocation Site Approvals with respect to 2000 Marin, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval and Relocation Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

6.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 6.7, and (iii) this Agreement (collectively, "**Applicable Laws**").

6.3 Criteria for Later Approvals. Developer shall be responsible for obtaining applicable Later Approvals before the start of construction that requires such approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval

based upon an item or element that is consistent the Approvals, and shall consider all such applications in accordance with City's customary practice, normal discretion and Applicable Laws, subject to the requirements of this Agreement. The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Approvals and the Planning Code, and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" or the Temporary Relocation Site under this Agreement. The Parties acknowledge that Developer may re-evaluate and pursue Later Approvals to modify the Project Variant, including alterations to the design, massing, location and overall configuration of the Project Variant, but not including an increase to the maximum square footage or shadow cast by the Project Variant when considered in its entirety.

6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from Developer of a completed application (with any required supporting documentation) for one of more Later Approvals, Relocation Site Approvals, or Permanent Off-Site Approvals, the City shall use reasonable efforts to promptly commence and complete all steps necessary to act on such applications in a timely way and in accordance with applicable Laws.

6.5 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Mechanical

Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, and the Public Works Code and Subdivision Code and other uniform construction codes applicable on a City-Wide basis. This shall not be construed to prohibit exceptions, equivalencies, or other administrative relief available under such Codes.

6.6 Denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. If the City denies any application for a Later Approval that implements a Building that is part of the Project or a Relocation Site Approval or Permanent Off-Site Approval for the Temporary Relocation Site or Alternative Permanent Site, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with this Agreement, earlier Approvals, and Applicable Laws, and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, earlier Approvals and Applicable Laws, and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

6.7 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**New City Laws**") shall apply to the Project, the Project Site, and the Temporary Relocation Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

6.7.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project or the Temporary Relocation Site at 2000 Marin, or any part thereof, or otherwise require any reduction in the square footage, number, or size of the proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from those permitted under the Approvals;

(b) limit or reduce the height, bulk, or mass of the Project, or any part thereof, or otherwise require any reduction in the height, bulk, or mass of individual Buildings or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, or the amount or location of parking or loading from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the consideration of the Phase 1(b) Office Allocation as specified in Section 6.8(b), or demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

(i) impose any regulation or other requirement that controls commercial rents or purchase prices charged within the Project or on the Project Site, except as set forth in this Agreement and the Tri-Party Agreement;

(j) materially limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 6.9.2); or

(l) Reduce the amount of allowable parking or loading for the Project or the Temporary Relocation Site at 2000 Marin; or

(m) Negatively alter the Phase 1(b) Office Allocation priority in Section 6.8(b).

6.7.2 Developer may, at its sole discretion, elect to have a New City Law that conflicts with this Agreement be applied to the Project or the Project Site by giving the City written notice of its election to have a New City Law applied, in which case such New City Law shall be deemed to be an Existing Standard;

6.7.3 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge parcels within the Project Site as is required or may be desirable in order to developer a particular phase of the Project the Project or to lease, mortgage or sell all or some portion of it. The specific boundaries of

parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals or Later Approvals.

6.8 Proposition M Office Allocation. The Project includes up to 2,061,380 gross square feet ("**GSF**") of office development proposed to be constructed in three phases: (i) Phase 1(a) with up to 1,384,578 GSF of office, (ii) Phase 1(b) with up to 351,895 GSF of office; and (iii) Phase 1(c) with up to 324,907 GSF of office. Before the Effective Date, by Motion No. 20485 (the "**Office Allocation Motion**"), the Planning Commission adopted findings pursuant to Planning Code Section 321(b)(1) that up to 2,061,380 GSF of office development at the Project Site contemplated by this Agreement and the Central SOMA Plan and Design Guidelines promotes the public welfare, convenience and necessity, and in doing so it considered the criteria in Planning Code Section 321(b)(3)(A)-(G). The findings contained in the Office Allocation Motion are incorporated into this Agreement. Because the office development contemplated by the Project has been found to promote the public welfare, convenience and necessity, the determination required under Section 321(b), where applicable, will be deemed to have been made for the entire Project (i.e., up to 2,061,380 GSF of office development undertaken consistent with the Project).

(a) In the Office Allocation Motion, the Planning Commission also granted up to 1,384,578 GSF of Prop M office allocation for Phase 1(a).

(b) Additional Prop M allocations for Phase 1(b) and Phase 1(c) are necessary for completion of the Project and to support the viability of the Associated Public Benefits for each respective Phase. An application for the Phase 1(b) and 1(c) Prop M allocations is on file with the Planning Department under Case No. 2017-000663OFA. If Developer is not then in default under this Agreement, the Planning Commission shall consider the Phase 1(b) office allocation at its first regularly scheduled hearing on or after October 17, 2021, unless otherwise requested by Developer. Developer shall notify the Planning Director not less than 60 days in advance of the hearing date to ensure that the matter is added to the calendar, and Developer has the right to make changes to its existing application at any time before such notification date. Provided the design of the Project remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to additional office allocation of no less than 351,895 gsf under Sections 320-325 over office development proposed elsewhere in the City, subject to the existing priorities previously given to (a) the Mission Bay South Project Area; (b) the Transbay Transit Tower proposed for development on Lot 001 of Assessor's Block No. 3720; and (c) the Treasure Island development project. Notwithstanding the above, no office development project can be approved that would cause the then applicable annual limitation contained in Planning Code Section 321 to be exceeded, and the Planning Commission shall consider the design of the Project to confirm that it remains consistent with the Planning Commission's findings under Section 321(b)(3)(A)-(G) in the Office Allocation Motion. The requirements for Planning Commission approval described above will apply to the Project except to the extent such application would be prohibited by applicable law.

(c) Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which either the Stay Option or the

Permanent Off-Site Option is exercised by the City to obtain a site permit for office development for the applicable phase of the Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

6.9 Fees and Exactions.

6.9.1 Generally. The Project and the Temporary Relocation Site at 2000 Marin shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 6.7, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or the Temporary Relocation Site at 2000 Marin, or impose new conditions or requirements for the right to develop the Project or the Temporary Relocation Site at 2000 Marin (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 6.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

6.9.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project (or the Project Variant) or components thereof except for (i) those Impact Fees and Exactions specifically set forth on Exhibit P, and (ii) the SFPUC Capacity Charges, as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the Parties acknowledge and agree that the

Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined; provided (i) in determining the amount of the Impact Fees and Exactions during the Initial Term only (as extended by Litigation Extension, if any), the rates will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid, and (ii) the initial Jobs Housing Linkage Fee shall not be calculated from the Effective Date, but instead shall be set based on legislation per Ordinance No. 251-19 (File No. 190548) to update the Jobs Housing Linkage Fee if adopted before the date of payment (or, once adopted, the updated Fee amount will apply to payments made after the date of adoption), and thereafter shall adjust under Planning Code Section 409 as set forth in clause (i) above. During the Extension Term (if any), Developer shall be subject to any increase or decrease in the fee amount payable and any changes to the methodology of calculation (e.g., use of a different index to calculate annual increases), but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date. No Impact Fees or Exactions shall apply to the use of the Temporary Relocation Site at 2000 Marin for pre-existing uses or for new spaces constructed for flower market tenants.

(a) Jobs-Housing Linkage Fee and Affordable Housing Site Dedication. , Developer may satisfy all or a portion of its obligation under Planning Code Section 413 by utilizing the Transfer Parcel as a land dedication alternative (the "**JHL Fee Credit**") in accordance with Planning Code Sections 249.78(e)(2) and 413.7.

(b) Central SoMa Legacy Business and PDR Support Fund. In the event the Permanent Off-Site Option is exercised pursuant to Article 3, Developer shall deposit Twenty Million Dollars ($20,000,000) into a special fund or other account designated by the City (the "Central SoMa Legacy Business and PDR Support Fund") prior to issuance of the first construction document for the Project. Central SoMa Legacy Business and PDR Support Fund shall be used by the City to provide annual business grants to the Master Tenant under the Permanent Off-Site Master Lease each year beginning in the fourth year of the lease term, up to the earlier to occur of (i) thirty-four (34) years after commencement of the Permanent Off-Site Master Lease, or (ii) exhaustion of funds in the Central SoMa Legacy Business and PDR Support Fund. The amount of such annual grant shall be determined by the City's Controller in consultation with the OEWD Director of Development, and shall be based upon the amount which, in the Controller's best judgment, will assure a continuous revenue stream during the lease term and will also provide necessary support to the Master Tenant. Notwithstanding the foregoing, if the City has not waived Twenty-Eight Million Five Hundred Thousand Dollars ($28,500,000) in Impact Fees and Exactions prior to issuance of the first construction document for the Project, then Developer shall not have any obligation to deposit funds into the Flower Market Legacy Business Fund. At the end 34 years, any unexpended funds shall be retained by the City to be used for job training, job retention, and other economic development purposes or shall be deposited into the fund from which it was diverted or the relevant successor fund.

(c) Eastern Neighborhoods Infrastructure Fee and Gateway Marker. Notwithstanding the provisions of Planning Code Section 423,

Developer shall fund the design and complete the construction of an arch, monument, pillar or other physical marker, in a public location approved by the Planning Director, identifying the San Francisco Filipino Cultural Heritage District ("**Gateway Marker**"). The construction and permitting of the Gateway Marker shall be subject to the Planning Director's approval as to design and location, at his or her sole discretion following any required environmental review. Upon approval of the design, if any, the City shall enter into an in-kind agreement, using the City's standard form, to provide credit against Developer's Eastern Neighborhoods Infrastructure Impact Fees under Planning Code Section 423 in an amount equal to Developer's third party design and construction costs but not to exceed $300,000. In the event the Gateway Marker is not fully approved and permitted by the City three years after the Effective Date, the City may instead allocate $300,000 of the Developer's Eastern Neighborhoods Infrastructure Impact Fees paid, or to be paid, to the Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District, administered by the Mayor's Office of Housing and Community Development under Administrative Code Section 10.100-52.

6.9.3 Processing Fees. Developer shall pay all Processing Fees in effect, on a City-wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

6.10 Changes in Federal or State Laws.

6.10.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that

is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

6.10.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 6.8.4, as applicable.

6.10.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

6.10.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 6.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 6.8 would materially and adversely affect or limit the Community Benefits (a "**Law Adverse to the City**"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 6.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San

Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Associated Community Benefits for each Building completed as set forth in Section 5.1.

6.11 No Action to Impede Approvals. Except and only as required under Section 6.8 the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 6.6.1.

6.12 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; (iv) the findings of the City with respect to the most

recent annual review performed pursuant to Section 9; (v) the Effective Date of the Agreement; and (vi) the names of the Mortgagee that are subject to receiving notices under Section 11.3. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request. The City acknowledges that third parties with a property interest in the Project Site, such as mortgagees, acting in good faith, may rely upon such a certificate.

6.13 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 6. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Planning Code and the Central SOMA Plan.

6.14 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or

any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

7. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building commenced by Developer as set forth in Section 5.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when each Phase and all of the Associated Community Benefits tied to that Phase have also been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit N for the applicable property.

8.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals, and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals, and any Later Approvals, are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department (in consultation with OEWD) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. Each City Agency responsible for reviewing any Later Approvals shall designate a single employee responsible for working with Developer and the Planning Department: (i) to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) to interface with City staff responsible for reviewing

any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

8.2.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

8.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project is commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal. Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project (and therefore, there is more than one party that assumes obligations of “Developer” under this Agreement), then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project and only as to such portion,

and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

8.2.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

8.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals.

8.4 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement and the Approvals in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

9.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 9.2.

9.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation (not including any proprietary or confidential information, to the extent any exists), Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

9.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be

deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

9.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

9.2.4 Default. The rights and powers of the City under this Section 9.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of a Default.

10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

10.1 Enforcement. The only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and

Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

10.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 10.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 10.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 10.3.

10.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any

notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations, provided City shall have the right to withhold Later Approvals for all or any part of the Project Site if Developer fails to fulfill the Flower Market Obligations as and when required under this Agreement. Subject to the foregoing, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site. For purposes of this Section 10, a Party shall include all of its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any termination or other remedy against that Party may include the same remedy against all such Affiliates.

10.4 Remedies.

10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 10.4.3, 10.4.4, and 10.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

10.4.2 Termination. Subject to the limitation set forth in Section 10.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date

set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 10.3 and 13.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

10.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 10.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or

will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 10.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

10.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which Developer is in Default or Developer has failed to pay amounts due to the City under this Agreement; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City (subject to the Flower Market Obligation provisions described below). The City shall have the right to withhold a final certificate of occupancy within a Phase until all of the Associated Community Benefits tied to that Phase, together with the Flower Market Obligations, have been completed or Developer has provided the City with adequate security for completion of such Community Benefit (*e.g.*, a bond or letter of credit) as

approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney). For a Phase to be deemed completed, Developer shall have also completed all of the public open spaces and improvements for that Phase as set forth in Exhibit H or in a Later Approval; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance. Notwithstanding anything to the contrary above, the City shall have the right to withhold all certificates of occupancy and other Later Approvals Project-wide (against all Developers) if the Flower Market Obligations have not been satisfied when required. If the Payment Option has not been exercised, the Parties intend that the Post-Development Subtenants will be moved back to the Project Site first, and agree that City can withhold certificates of occupancy and Later Approvals for space at the Project Site until all of the Post-Development Subtenants (not including those who elect to move elsewhere) have moved back to the Project Site in accordance with the Flower Market Obligations.

10.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in

such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

11. FINANCING; RIGHTS OF MORTGAGEES

11.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site.

11.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 11.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 5.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

11.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

11.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 11.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period:

(i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, provided that such period is tolled for any period during which the Mortgagee is prohibited from proceeding with foreclosure proceedings, e.g. due to a bankruptcy filing, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

11.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 5.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant

to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

11.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

11.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

12. AMENDMENT; TERMINATION; EXTENSION OF TERM

12.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided that following a Transfer, the City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 8.2.2, 8.4.2, and 12.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent

it affects any rights or obligations of a City department, after consultation with that City department).

12.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to Commence Construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

12.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Phase that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Phase that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction,

interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 12.3 shall survive the termination of this Agreement.

12.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and no change to the Project that is permitted under the Central SOMA Plan shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project (or the Project Variant) as described in the Exhibits in keeping with its customary practices and the Central SOMA Plan, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

12.5 Extension Due to Legal Action or Referendum; Excusable Delay.

12.5.1 Litigation and Referendum Extension. If any litigation is filed challenging the Central SOMA Plan, the Central SOMA Plan FEIR, this Agreement, or an Approval having the direct or indirect effect of delaying this Agreement, or any Approval (including but not limited to any CEQA determinations), Relocation Site Approval, or Permanent Off-Site Approval that is initially granted prior to the Relocation Date, including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, this Agreement, Approval, Relocation Site Approval, or Permanent Off-Site Approval that is initially granted prior to the Relocation Date is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals that are initially granted prior to the Relocation Date shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals initially granted prior to the Relocation Date, the date of the initial grant of such Approval, Relocation Site Approval, or Permanent Off-Site Approval initially granted prior to the Relocation Date) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

12.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of

terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

14.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Transferee (*i.e.,* the person or entity that is the Developer for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

14.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M (including the indemnifications, the agreement and covenant not to challenge the enforceability

of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review within thirty (30) days after receipt, with such review being limited to confirming the Assignment and Assumption Agreement satisfies the requirements of this Agreement. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 13.1 shall not require the transfer of land or any other real property interests to the CMA.

14.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 13.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 9 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

14.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the

Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.

14.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

14.6 Rights of Developer. The provisions in this Section 13 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

15. DEVELOPER REPRESENTATIONS AND WARRANTIES

16.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

16.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the

agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

16.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

16.4 Notification of Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating

officer; any person with an ownership interest of more than 10% in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

16.5 Other Documents. To the current, actual knowledge of _____ and _____, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

16.6 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

17. MISCELLANEOUS PROVISIONS

17.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

17.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and

made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

17.3 Binding Covenants; Run With the Land. Pursuant to Section 65864 et seq. of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 13, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 13, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Sections 1468-1470.

17.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

17.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

17.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

17.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

17.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

17.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

17.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

17.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other or additional person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, Flower Mart Project

To Developer:

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

with a copy to:

Reuben, Junius, & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attn: Daniel Frattin or Tuija Catalano

17.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to

Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

17.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

17.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

17.15 Tropical Hardwood and Virgin Redwood. The City 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.

17.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the

extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

17.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, or its successors and assigns, in the event of any Default by City, or for any amount, which may become due to Developer, or its successors and assigns, under this Agreement.

17.18 Non-Liability of Developer Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of Developer or affiliate of Developer shall be personally liable to City, or its successors and assigns, in the event of any Default by Developer, or for any amount, which may become due to City, or its successors and assigns, under this Agreement.

17.19 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved on _____, 2019
Board of Supervisors Ordinance No. _____

APPROVED AND AGREED:

By: _____
Naomi Kelly, City Administrator

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited liability company

By: Kilroy Realty, L.P,
a Delaware limited partnership,
its Sole Member

By: Kilroy Realty Corporation,
a Maryland corporation,
its General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form:

DENNIS J. HERRERA, City Attorney

By:

Elizabeth A. Dietrich
Deputy City Attorney

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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 San Francisco)

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State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code

Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

FOR PROPERTY AT 5th and BRANNAN STREETS

Block 3778: Lots 1B, 2B, 4, 5, 47 and 48

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this ____ day of _____, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and KR FLOWER MART LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer owns and operates the approximately 295,144 square foot site along Brannan Street between 5th and 6th Streets, on Assessor's Block 3778, Lots 001B, 002B, 004, 005, 047 and 048, composed of the 141,992 square feet of flower market, approximately 4,900 square feet of existing retail uses, 45,549 square feet of vacant PDR space, and surface parking lots, as more particularly described on Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed use development that will include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing approximately: 2,032,165 square feet of office space; 89,459 square feet of retail space; 115,000 rentable square feet of vendor space (including accessory retail space) for a new wholesale

flower market; 30 loading spaces; and 769 parking spaces; all as more particularly described in Exhibit B.1 (the "**Project**") and shown in Exhibit C.1. The exact numbers listed above may change, in keeping with Planning Department standard practices consistent with the Planning Code.

C. In order to satisfy the tenants' request to have an Permanent Off-Site Option (per Article 3), the Developer is also seeking entitlements for a revised project that replaces the on-site new wholesale flower market with approximately 113,036 square feet of other uses at the Project Site, consisting of a development with approximately: 2,061,380 square feet of office space; 90,976 square feet of retail space; 22,690 square feet of childcare use, including outdoor activity area; 9 loading spaces; and 632 vehicle parking spaces, all as more particularly described in Exhibit B.2 and shown in Exhibit C.2 (the **"Project Variant**"). All references in this Agreement to the "**Project**" shall mean (1) before selection under Article 3, both the Project and the Project Variant, and (2) following selection under Article 3, either the Project or the Project Variant, whichever is selected.

D. As part of the Project, Developer will relocate the existing flower market tenants to an interim facility constructed by Developer at the Temporary Relocation Site before Commencing Construction of the Project. Upon completion of the Project, Developer shall pay to move the flower market tenants back to the Project Site under the Project or to the Permanent Off-Site Facility under the Project Variant, as applicable. Alternatively, in the event the Permanent Off-Site Option is exercised, Developer may skip the Temporary Relocation Site and move the flower market vendors straight to the Permanent Off-Site Facility if the Permanent Off-Site Facility has been completed by the time Developer initially moves the flower market vendors from the Project Site. These commitments by Developer, together with certain rent

schedule commitments for a period of at least 34.5 years, are also made in a tri-party agreement among Developer, Tenant Association, and SFFM, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**").

E. The Project is anticipated to generate an annual average of approximately 8,050 construction jobs during construction and, on completion, an approximately $29.9 million annual increase in general fund revenues to the City and approximately $9.3 million annual increase in non-general fund revenues to the City.

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56. The Parties acknowledge that this Agreement is entered into in consideration of their respective burdens and benefits, including the representations and warranties, in this Agreement. The Parties also acknowledge that this Agreement is entered into to encourage and maintain effective land use planning.

G. As a result of the development of the Project in accordance with this Agreement, the City has determined that additional benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These

additional benefits are essential elements for this Agreement and include development of a new permanent home for the flower market, with subsidized rents, the dedication of a housing parcel, onsite childcare, workforce commitments and certain public improvements as described herein.

H. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), "**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project. Pursuant to Government Code Section 65867.5, this Agreement is a legislative act that is approved in an ordinance by the Board of Supervisors.

I. The Project Site is located in the recently adopted Central SOMA Plan area, which was approved by the Board of Supervisors on November 27, 2018 and December 4, 2018, pursuant to Ordinance Nos. 282-18, 296-18 and 280-18, Board of Supervisors File Nos. 180490, 180184, and 180185, respectively, which among other actions rezoned the Project Site for the CMUO (Central SOMA Mixed-Use Office) and MUR (Mixed Use Residential) zoning districts, and the 270-CS and 160-CS height and bulk districts.

J. The City analyzed the environmental impacts of the development density associated with the Project in the Central SOMA Plan Final Environmental Impact Report (**"Central SOMA FEIR"**), certified by the Planning Commission in Motion No. 20182, on May

10, 2018. Potential development at 2000 Marin Street, as the Temporary Relocation Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report (**"Bayview FEIR**"), which was certified by the San Francisco Redevelopment Agency on March 2, 2006. On July 3, 2019, the Environmental Review Officer (**"ERO"**) issued a Community Plan Exemption ("**CPE**") and Addendum for the Project and the Temporary Relocation Site at 2000 Marin Street, including the mitigation monitoring and reporting program (**"MMRP"**). The CPE were prepared in accordance with CEQA and issued by the Planning Department in Case Nos. 2015-004256ENV. Copies of the Certificate of Determination are on file with the Board of Supervisors in File Nos. 190682 and 190681, and are incorporated herein by reference.

K. On July 18, 2019, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission granted Approvals for the Project and adopted the MMRP, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). The information in the Central SOMA FEIR, Bayview FEIR, and CPE were considered by the City in connection with approval of this Agreement.

L. On _____, 2019, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made

the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2019, the Board adopted Ordinance Nos. [_____] approving this Agreement (File No. 190682) and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2020.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 **"Addendum"** has the meaning set forth in Recital J.

1.2 "**Administrative Code**" means the San Francisco Administrative Code.

1.3 "**Affiliate" or "Affiliates**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "**control**" means the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.4 "**Agreement**" means this Development Agreement, including the Recitals and Exhibits.

1.5 "**Alternative Permanent Site**" means a Viable site, in lieu of the Project Site, for the location of the Permanent Off-Site Facility, pursuant to Section 3 to this Agreement, in the event the Permanent Off-Site Option is exercised.

1.6 "**Alternative Option Period**" has the meaning set forth in Section 3.5.

1.7 "**Annual Review Date**" has the meaning set forth in Section 9.1.

1.8 "**Applicable Laws**" has the meaning set forth in Section 6.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.9 "**Approvals**" means the City approvals and entitlements listed on Exhibit K.

1.10 "**Assignment and Assumption Agreement**" has the meaning set forth in Section 13.2.

1.11 "**As Is Relocation Option**" has the meaning set forth in Section 3.8.1(b).

1.12 "**Associated Community Benefits**" is defined in Section 5.1.

1.13 **"Bayview FEIR"** shall have the meaning set forth in Recital J.

1.14 "**Board of Supervisors**" or "**Board**" means the Board of Supervisors of the City and County of San Francisco.

1.15 "**Building**" means the Market Hall Building, the Blocks Building, or the Gateway Building (or collectively, the "**Buildings**"), as generally described in Exhibit B.

1.16 **"Central SOMA FEIR"** shall have the meaning set forth in Recital J.

1.17 "**Central SOMA Plan**" shall have the meaning set forth in Recital I.

1.18 "**CEQA**" has the meaning set forth in Recital H.

1.19 "**CEQA Findings**" means the CEQA findings made by the Planning Commission and the Board of Supervisors in approving this Agreement.

1.20 "**CEQA Guidelines**" has the meaning set forth in Recital H.

1.21 "**CFD**" means a community facilities district formed over all of the Project Site that is established under the CFD Act in accordance with the Central SOMA Plan.

1.22 "**CFD Act**" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Act, as amended from time to time.

1.23 "**Chapter 56**" has the meaning set forth in Recital F.

1.24 "**City**" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.25 "**City Agency**" or "**City Agencies**" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFFD, SFMTA, SFPUC, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction or discretion of a City department that has not approved or consented to this Agreement in connection with the issuance or denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. The City actions and proceedings

subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

1.26 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

1.27 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including without limitation reasonable attorneys' fees and costs and third party costs relating to the Project, the Temporary Relocation Facility, and the Permanent Off-Site Facility, but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 10.6 when Developer is the prevailing party.

1.28 "**City Parties**" has the meaning set forth in Section 5.6.

1.29 "**City Report**" has the meaning set forth in Section 9.2.2.

1.30 "**City-Wide**" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.31 "**CMA**" is defined in Section 13.1.

1.32 "**Commence Construction**" means the commencement of physical construction of the applicable Building foundation on the Project Site.

1.33 "**Community Benefits**" has the meaning set forth in Section 5.1.

1.34 "**Community Benefits Program**" has the meaning set forth in Section 5.1.

1.35 "**CPE**" has the meaning set forth in Recital J.

1.36 "**Declaration of Restrictions**" has the meaning set forth in Section 3.11.

1.37 **"Default**" has the meaning set forth in Section 10.3.

1.38 "**Design Guidelines**" means the Key Development Site Guidelines adopted as part of the Central SOMA Plan.

1.39 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

1.40 "**Development Agreement Statute**" has the meaning set forth in Recital F, as in effect as of the Effective Date.

1.41 "**DPW**" means the San Francisco Department of Public Works.

1.42 "**Effective Date**" has the meaning set forth in Section 2.1.

1.43 "**Enacting Ordinance**" has the meaning set forth in Recital M.

1.44 "**Excusable Delay**" has the meaning set forth in Section 12.5.2.

1.45 "**Exercise Notice**" has the meaning set forth in Section 3.4.

1.46 **"Existing Flower Market"** means the improvements existing on the Project Site as of Effective Date, excluding the Zappettini Parcel.

1.47 "**Existing Standards**" has the meaning set forth in Section 6.2.

1.48 "**Existing Subtenant**" means each of those existing flower mart tenants who has a sublease for space at the Existing Flower Market as of the Relocation Date. Only Existing Subtenants in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent

Off-Site Facility under the Permanent Off-Site Option.

1.49 "**Existing Uses**" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date.

1.50 "**Extended Alternative Option Period**" has the meaning set forth in Section 3.4.

1.51 "**Federal or State Law Exception**" has the meaning set forth in Section 6.10.1.

1.52 "**Flower Market Obligations**" means Developer's obligations described in Article 3 and in subsection 5.1.1.

1.53 "**Foreclosed Property**" is defined in Section 11.5.

1.54 "**General Plan Consistency Findings**" has the meaning set forth in Recital K.

1.55 "**Gross Floor Area**" has the meaning set forth in Planning Code Section 102 as of the Effective Date.

1.56 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, including offsets for any applicable fee credits, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to the Transportation Sustainability Fee (per Planning Code Section 411A), the Jobs-Housing Linkage Fee (per Planning Code Section 413), Child Care Fee (per Planning Code Section 414), Art Fee (per Planning Code Section 429), School Impact Fee (California Education Code Section 17620), Eastern Neighborhoods Infrastructure Impact Fee (per Planning Code Section 423), or fees,

dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees (including CFD special taxes due under the Central SOMA Plan), SFPUC Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws. A sample calculation of the applicable Impact Fees and Exactions is included in Exhibit P.

1.57 "**Interim Lease**" means a lease entered into by Developer, as tenant, and the owner of the Temporary Relocation Site, for the temporary flower market, consistent with the requirements of the Tri-Party Agreement and this Agreement.

1.58 "**JHL Fee Credit**" has the meaning set forth in Section 6.9.1(a).

1.59 "**Later Approval**" means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, design review approvals, improvement agreements, use permits, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, street space permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.60 "**Law(s)**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" shall refer to any or all Laws as the context may require.

1.61 "**Law Adverse to City**" is defined in Section 6.10.4.

1.62 "**Law Adverse to Developer**" is defined in Section 6.10.4.

1.63 "**Litigation Extension**" has the meaning set forth in Section 12.5.1.

1.64 "**Losses**" has the meaning set forth in Section 5.6.

1.65 "**Master Tenant**" means the direct tenant or subtenant of Developer at any of the Existing Flower Market, the Temporary Relocation Facility, the Permanent Off-Site Facility, or the New Wholesale Flower Market, as applicable.

1.66 "**Material Change**" means any modification that would materially alter the rights, benefits or obligations of the City or Developer under this Agreement that is not consistent with the Central SOMA Plan or that (i) extends the Term, (ii) changes the permitted uses of the Project Site, (iii) decreases the Community Benefits, (iv) increases the maximum height, density, or bulk by more than ten percent (10%) the size of the Project or changes the parking ratios (other than as permitted under the Central SOMA Plan), or (vi) reduces the applicable rate for the Impact Fees and Exactions.

1.67 "**Mitigation Measures**" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.

1.68 "**MMRP**" means that certain mitigation monitoring and reporting program attached hereto as Exhibit L.

1.69 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site or the Alternative Permanent Site to secure an obligation made by the property owner or holder of a leasehold interest.

1.70 "**Mortgagee**" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.71 "**Municipal Code**" means the San Francisco Municipal Code.

1.72 "**New City Laws**" has the meaning set forth in Section 6.7.

1.73 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market (including 10,000 square feet of accessory retail) to be constructed on the Project Site as part of the Project, as more particularly described in the project description in Exhibit B.1.

1.74 "**Non-City Agency**" means Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement.

1.75 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.76 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.77 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee.

1.78 **"Permanent Off-Site Approvals"** means the Permanent Off-Site Building Approvals and the Permanent Off-Site Entitlement Approvals.

1.79 "**Permanent Off-Site Building Approvals**" means the first site permit or first building permit issued by the City or any City Agency, other than the Approvals, for the Alternative Permanent Site and/or the Permanent Off-Site Facility.

1.80 **"Permanent Off-Site Entitlement Approvals"** means any land use approval or entitlement issued by the City or any City Agency, other than the Approvals, that are necessary for the use of the Permanent Off-Site Facility and the Alternative Permanent Site as a wholesale flower market with ancillary retail uses, including without limitation Planning Commission and/or Planning Department entitlements, Planning Code amendments, and completion of CEQA review.

1.81 "**Permanent Off-Site Facility**" means a permanent flower market facility to be constructed at the Alternative Permanent Site, in lieu of the New Wholesale Flower Market at the Project Site, pursuant to Section 3 and Exhibit F-1 to this Agreement, in the event the Permanent Off-Site Option is exercised, as more particularly set forth in Section 3.7.

1.82 "**Permanent Off-Site Master Lease**" means a lease for the Alternative Permanent Site entered into by Developer, as the landlord, and Master Tenant, as the tenant, for a term of no less than 34.5 years or 35 years, as approved by the City, after the relocation of the Vendors.

1.83 "**Permanent Off-Site Notice**" has the meaning set forth in Section 3.3.

1.84 "**Permanent Off-Site Option**" means an option whereby in lieu of a New Wholesale Flower Market at the Project Site, a Permanent Off-Site Facility is constructed at the Alternative Permanent Site and leased pursuant to the Permanent Off-Site Master Lease.

1.85 "**Phase**" means either Phase 1(a), Phase 1(b) or Phase 1(c), as applicable.

1.86 "**Phase 1(a)**" means the issuance of a certificate of occupancy and/or final completion for the Blocks Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H. If the Stay Option is exercised, Phase 1(a) will not be deemed complete until all Post-Development Subtenants who have entered into a Post-Development Sublease have been relocated back to the Project as part of Developer's relocation program in accordance with the Tri-Party Agreement.

1.87 "**Phase 1(b)**" means the issuance of a certificate of occupancy and/or final completion for the Market Hall Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.88 "**Phase 1(c)**" means the issuance of a certificate of occupancy and/or final completion for the Gateway Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.89 "**Planning Code**" means the San Francisco Planning Code.

1.90 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.91 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

1.92 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.

1.93 **"Post-Development Subtenant"** means each of those Existing Subtenants and Pre-Development Subtenants who pursuant to the terms of the Tri-Party Agreement enter into

a Post-Development Sublease with the owner or master lessor thereof at the New Wholesale Flower Market.

1.94 **"Post-Development Sublease"** means a lease agreement at the New Wholesale Flower Market between Developer or the master lessor of the New Wholesale Flower Market and each Post-Development Subtenant.

1.95 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who, in accordance with the terms of the Tri-Party Agreement (and the Pre-Development Lease defined therein), entered into a Pre-Development Sublease for space at the Existing Flower Market or the Temporary Relocation Site, as applicable. Only Pre-Development Subtenants that remain in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent Off-Site Facility under the Permanent Off-Site Option.

1.96 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.97 "**Project**" means either the Project or the Project Variant, once determined in accordance with Article 3, together with Developer's rights and obligations under this Agreement.

1.98 **"Project Open Space"** means the privately owned, publicly accessible open space described in Exhibit I.

1.99 "**Project Site**" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

1.100 **"Project Variant"** means the mixed use development project described in Recital C and Exhibit B.2 and the Approvals.

1.101 "**Public Health and Safety Exception**" has the meaning set forth in Section 6.10.1.

1.102 **"Public Improvements"** means the following improvements: (i) new sidewalks and sidewalk amenities at a width and design to be determined by DPW and Planning Department staff in accordance with the Better Streets Plan, Central SOMA Plan, and Planning Code, (ii) curbs on the portions of Brannan, Fifth, Sixth, and Morris Streets adjoining the Project Site as outlined in the drawings attached to the Approvals from the Planning Commission; (iii) off-site public open space improvements under the elevated portion of Interstate-80 between.

1.103 **"Relocation Date"** means the date on which all of the Vendors who wish to be relocated to the Temporary Relocation Facility, or to the Permanent Off-Site Facility, as applicable, are relocated by Developer in accordance with the Tri-Party Agreement.

1.104 "**Relocation Matters**" has the meaning set forth in Section 3.3.

1.105 "**Relocation Option During Litigation Pendency**" has the meaning set forth in Section 3.8.2(d).

1.106 "**Relocation Site Approval**" means land use approvals and Planning Code exceptions applicable to the Temporary Relocation Site at 2000 Marin set forth on Exhibit Q, and any land use approvals, entitlement, or permit, from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Relocation Site located at 2000 Marin by the Existing Subtenants and Pre-Development Subtenants during the construction of the Project.

1.107 "**SFFD**" means the San Francisco Fire Department.

1.108 "**SFFM**" means San Francisco Flower Mart LLC, a California limited liability company.

1.109 "**SFMTA**" means the San Francisco Municipal Transportation Agency.

1.110 "**SFPUC**" means the San Francisco Public Utilities Commission.

1.111 "**SFPUC Capacity Charges**" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

1.112 "**Stay Notice**" has the meaning set forth in Section 3.3.

1.113 "**Stay Option**" means Developer construction of a New Wholesale Flower Market at the Project Site.

1.114 "**Subdivision Code**" means the San Francisco Subdivision Code.

1.115 "**Subdivision Map Act**" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.116 "**Temporary Relocation Facility**" means the temporary flower market facility to be built by Developer (if at all) at no cost to the City or to the flower market Vendors, and meeting the requirements of Exhibit E.

1.117 **"Temporary Relocation Site"** means a Viable site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Relocation Facility. In the event the Stay Option is exercised, the Temporary Relocation Site will be at 2000 Marin so long as no other mutually agreeable Viable temporary site is selected by the Parties and Developer has entered into an Interim Lease for 2000 Marin.

1.118 "**Tenant Association**" means the San Francisco Flower Market Tenants' Association.

1.119 "**Tenant Option Period**" has the meaning set forth in Section 3.3.

1.120 "**Term**" has the meaning set forth in Section 2.2.

1.121 "**Third-Party Challenge**" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals, Later Approvals, the CPE or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

1.122 "**Transfer," "Transferee" and "Transferred Property**" have the meanings set forth in Section 13.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

1.123 "**Transfer Agreement**" means that certain Agreement for Transfer of Real Estate attached as Exhibit S for the transfer of property outside the Project Site from Developer to the City to be used by the City for the development of affordable housing or to fund the development of affordable housing, as may be determined by City.

1.124 "**Transfer Parcel**" means vacant, unimproved land within the Central or Western SoMa Plan Area, not less than 14,000 square feet, identified by Developer and acceptable to MOHCD, for conveyance to the City in accordance with the Transfer Agreement;

1.125 "**Transportation Program**" means the transportation program set forth in Exhibit J.

1.126 "**Tri-Party Agreement**" means that certain Tri-Party Agreement among

Developer, the Tenant Association, and the SFFM, dated as of June 26, 2015, and amended and restated on _____, 2019.

1.127 "**Ultimately Granted**" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the CPE shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the CPE, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the CPE, and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

1.128 "**Vendors**" means the Existing Subtenants and Pre-Development Subtenants that wish to be relocated to the Temporary Relocation Facility or the Permanent Off-Site Facility, as the context requires, in accordance with the Tri-Party Agreement and either the Pre-Development Master Lease or Permanent Off-Site Master Lease, as applicable.

1.129 "**Vested Elements**" has the meaning set forth in Section 6.1.

1.130 "**Viable**" has the meaning set forth in Section 3.7 with respect to Permanent Off-Site Facility. For a Temporary Relocation Site, "Viable" means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary retail uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can

accommodate the design and specifications set forth in Exhibit E for the Temporary Relocation Facility; (iv) the site is owned by Developer or under an Interim Lease with Developer; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit E for the Temporary Relocation Facility, or on which such a building could be constructed by Developer.

1.131 "**Workforce Agreement**" means the Workforce Agreement attached hereto as Exhibit O.

1.132 "**Zappettini Parcel**" means Assessor's Lots 047 and 048 on Block 3778.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative.

2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter (the "**Initial Term**"), unless extended or earlier terminated as provided herein, provided however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to terminate this Agreement with respect to the first Phase upon completion of the first Phase, including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the first Phase during the Initial Term and thereafter continues to diligently prosecute the first Phase to completion, and is not in Default (or has cured a Default pursuant to Section 10.3) under this Agreement between the date of exercise and the date the Initial Term expires, then Developer shall have the right to extend the term of this Agreement for an additional five (5) years (the "**Extended Term**") by delivering to the City, at

any time during the last year of the Initial Term, a notice of extension. The 5-year extension shall be automatic upon Developer's delivery of the extension notice unless Developer is in Default (not including a Default that was cured pursuant to Section 10.3) at the time Developer sends the notice or before the start of the Extended Term, in which case the City may reject the notice by written notice of rejection to Developer. The term of this Agreement (the "**Term**") shall mean the Initial Term plus, if applicable, the Extended Term. The performance period or the term for any Approval or Later Approval shall be for the longer of the Term or the performance period or term otherwise applicable to such Approval or Later Approval. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2.3 Phasing. Developer anticipates completing Phase 1(a) first, before Phase 1(b) or Phase 1(c); however, Developer may alter the anticipated phasing, including completion of multiple Phases simultaneously, so long as the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) described in Exhibit H are completed prior to Developer's receipt of the first certificate of occupancy for any Phase or portion thereof.

3. TEMPORARY RELOCATION SITE AND PERMANENT OFF-SITE FACILITY

3.1 Temporary Relocation Site. Before Developer may begin demolition on the portion of the Project Site other than the Zappettini Parcel, Developer shall (a) obtain the exclusive right to occupy (based on an Interim Lease or ownership interest) improved or unimproved real property for use of the Temporary Relocation Site, consistent with the requirements of the Tri-Party Agreement and this Agreement, (b) complete the Temporary Relocation Facility in accordance with the specifications set forth in Exhibit E, and (c) move the

Vendors that occupy the Existing Flower Market as of the Relocation Date and wish to be relocated to the Temporary Relocation Facility at no cost to the Vendors in accordance with the Tri-Party Agreement. Developer shall ensure that the Vendors have the continuing right to occupy the Temporary Relocation Facility under the Interim Lease, on the same terms of their then-existing subleases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than six (6) years, including any extension options, from the Interim Lease commencement date; provided the City may agree to a shorter term if the City determines that less time is needed for the completion of construction of the New Wholesale Flower Market or the Permanent Off-Site Facility, whichever is the case. Notwithstanding the foregoing, Developer may skip the Temporary Relocation Facility and move the Vendors straight to the Alternative Permanent Site if the Permanent Off-Site Option is selected when the Permanent Off-Site Facility at the Alternative Permanent Site is complete.

3.2 Permanent Off-Site Option or Stay Option. As set forth in this Article 3, the City shall elect either the Permanent Off-Site Option or the Stay Option. Following the City's election, Developer shall either (i) complete the New Wholesale Flower Market at the Project Site under the Stay Option, or (ii) complete the Permanent Off-Site Facility at the Alternative Permanent Site under the Permanent Off-Site Option.

3.3 Tenant Option Period. Tenant Association, acting through its counsel, will send to the City, with a copy to Developer, a notice requesting that the City proceed with the Stay Option in the form attached as Exhibit G-2 (the "**Stay Notice**") or the Permanent Off-Site Option in the form attached as Exhibit G-3 (the "**Permanent Off-Site Notice**") on or before thirty (30) days after the Effective Date ("**Tenant Option Period**"). The Stay Notice or the Permanent Off-Site Notice shall be sent by the Tenant Association's counsel, confirming that the Tenant

Association has affirmatively voted and approved, at a duly noticed and held election in accordance with the Tenant Association's bylaws to choose either the Stay Option or the Permanent Off-Site Option, and shall include, substantially in the form and content in the "Tenant Association Release and Indemnity" included in Exhibits G-2 and G-3, (1) a release of any claims by the Tenant Association against the City regarding this Agreement, the Tri-Party Agreement and any other related documents, the Temporary Relocation Site, New Wholesale Flower Market, the Alternative Permanent Site, and the relocation of Vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (2) a release of any claims by the Tenant Association against Developer for the Relocation Matters, but excluding all of Developer's prospective obligations under this Agreement and any other agreement between the Tenant Association and Developer; and (3) an indemnity by the Tenant Association, in favor of the City and Developer, for any claims made by any flower market vendor challenging any of the Relocation Matters.

3.4 Stay Option Exercise. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Tenant Option Period, the City will send the Exercise Notice in the form attached as Exhibit G-1 (the "**Exercise Notice**") to Developer within five business (5) days after receipt of the Stay Notice, electing the Stay Option if, on before the date that is sixty (60) days after the expiration of the Tenant Option Period ("**Alternative Option Period**"), which may be extended at Developer's request by an additional thirty (30) days or longer ("**Extended Alternative Option Period**"), Developer delivers to the City, with a copy to the Tenant Association, an executed Interim Lease for the Temporary Relocation Facility or proof of Temporary Relocation Site ownership. If the Stay Option is exercised the Permanent Off-Site

Option shall terminate and be no further force or effect. Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.

3.5 Permanent Off-Site Option Exercise. If the Tenant Association elects the Permanent Off-Site Option and sends the Permanent Off-Site Notice to the City before the end of the Tenant Option Period, the City shall exercise the Permanent Off-Site Option if, on or before the expiration of the Alternative Option Period or the Extended Alternative Option Period, as applicable, Developer delivers to the City, with a copy to the Tenant Association, preliminary conceptual plans for a Viable location in San Francisco for the Permanent Off-Site Facility, and the City agrees that the proposed Alternative Permanent Site is Viable. If the Developer does not deliver the above-mentioned conceptual plans in a timely manner or if the City does not agree that the Alternative Permanent Site is Viable, the Extended Alternative Option Period is extended until such time when the plans are delivered to the City or the City agrees that the Alternative Permanent Site is Viable, as applicable. The City shall exercise the Permanent Off-Site Option by delivery of the Exercise Notice to Developer in the form attached as Exhibit G-1 within five (5) business days after receipt of the above-mentioned information from Developer.

3.6 Tenant Failure to Exercise; Final City Election. If the City does not receive the Permanent Off-Site Notice or the Stay Notice before the end of the Tenant Option Period, the City has the right, in its sole discretion, to elect either the Permanent Off-Site Option or the Stay Option based upon all of the information available to it. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within fifteen (15) days after the Alternative Option Period or the Extended Alternative Option Period, as applicable. If the City fails to send the Exercise Notice by the end of such fifteen (15) day period,

then Developer shall have the right to choose between the Stay Option and the Permanent Off-Site Option.

3.7 Permanent Off-Site Facility Construction. The Permanent Off-Site Option is designed to provide for the renovation of existing building(s) and/or construction of new building(s) in order to create a permanent wholesale flower market at an Alternative Permanent Site by Developer (the "**Permanent Off-Site Facility**"). The Permanent Off-Site Facility constructed by Developer shall be on a Viable Alternative Permanent Site. "**Viable**" for purposes of an Alternative Permanent Site means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is not a publicly owned site; (iii) the site is mutually agreeable to Developer and Tenant Association; (iv) the site is either owned by Developer or leased by Developer for a term of at least 34.5 years or 35 years, as approved by the City; and (v) any lienholder with an interest in the site superior to the Permanent Off-Site Master Lease has provided reasonable non-disturbance protections to the Master Tenant and to any subtenants under the Permanent Off-Site Master Lease.

3.8 Completion of Design and Construction Documents. Following exercise of the Permanent Off-Site Option, Developer shall complete design and construction documents for the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease, submit applications for the Permanent Off-Site Approvals to the City, and shall construct the Permanent Off-Site Facility in accordance with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease.

3.8.1 If the Permanent Off-Site Option is exercised and any of the following circumstances occur: (i) the Permanent Off-Site Entitlement Approvals are not initially granted within the approval deadlines for environmental determinations specified

by Section 1(a) of Executive Directive No. 17-02 issued by Mayor Edwin M. Lee starting from the date of receipt of Developer's complete response to the first Notice of Planning Department Requirements issued by the Planning Department, subject to a 60-day cure period for the City (such period to commence upon written notice from Developer to the City and SFFM) to initially grant such Permanent Off-Site Entitlement Approvals and an extension period of up to one hundred twenty (120) days in the event that an administrative appeal is filed challenging the Permanent Off-Site Entitlement Approvals, and provided that in no case shall the approval time period be less than nine (9) months; (ii) the Permanent Off-Site Building Approvals are not finally granted within six (6) months starting from later to occur of the date the Permanent Off-Site Entitlement Approvals are initially granted or the date of acceptance by the City of a complete application for Developer's first site permit or first building permit for the Alternative Permanent Site, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the City to finally grant such Permanent Off-Site Building Approvals and subject to an extension for the period of any appeal of the Permanent Off-Site Building Approvals; provided that the City agrees that it will process the Permanent Off-Site Building Approvals in parallel with the pendency of the Permanent Off-Site Entitlement Approvals in accordance with its standard practices; (iii) an administrative appeal or judicial challenge is filed by Tenant Association, SFFM, or any vendor at the Existing Flower Market challenging the Permanent Off-Site Approvals, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for such parties to withdraw the administrative appeal(s) or expunge judicial challenge(s); or (iv) a judicial challenge is filed by any party

challenging the Alternative Permanent Site Approvals for the Permanent Off-Site Facility that results in the issuance of an injunction prohibiting the issuance of building permits, commencement of construction, and/or occupancy of the Permanent Off-Site Facility pursuant to the Permanent Off-Site Approvals, subject to a 120-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the injunction to be lifted, then all of the following shall apply:

(a) Developer may terminate the Pre-Development Lease by delivering six (6) months prior written notice to SFFM, with a copy to the City, and notwithstanding Section 3.1 requirements regarding commencement of demolition on the Project Site to the contrary, upon the Pre-Development Lease termination Developer may begin demolition of the Project Site and construction of the Project; and

(b) If Developer terminates the Pre-Development Lease, then upon delivery of Developer's termination notice pursuant to Section 3.8.1(a), Developer shall provide SFFM a right to relocate to the Permanent Off-Site Facility pursuant to the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent Off-Site Facility in an "as is" condition ("**As Is Relocation Option**"), which means the condition existing at the Alternative Permanent Site as of SFFM's exercise of the As Is Relocation Option; and

(c) Within 60 days of the receipt of Developer's termination notice, SFFM shall either: (i) accept the As Is Relocation Option, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent

Off-Site Facility in an "as is" condition per Section 3.8.1(b), and Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000) for any tenant improvements SFFM elects to complete to the Permanent Off-Site Facility; or (ii) reject, or fail to timely exercise, the As Is Relocation Option, in which case upon the effective date for the termination of the Pre-Development Lease, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco; and

(d) In the cases described in Section 3.8.1 (i), (ii), or (iv) above, then in addition to its choice of remedies described in the foregoing sentence and despite termination of the Pre-Development Lease, in lieu of the initial payment of $15,000,000, SFFM may choose to require Developer to diligently pursue the Permanent Off-Site Approvals and complete construction of the Permanent Off-Site Facility consistent with Exhibit F-1 and the Permanent Off-Site Master Lease for a period of twenty-four (24) months after SFFM's election, and if completion (i) occurs by the end of

such period then upon completion Developer shall relocate all Vendors who wish to be relocated to the Permanent Off-Site Facility pursuant to the Permanent Off-Site Master Lease, or (ii) does not occur by the end of such period then Developer shall pay $15,000,000 to SFFM upon expiration of such period.

3.8.2 In the event that a filing and pendency of a judicial challenge on the Permanent Off-Site Approvals exists and was filed by a party other than Tenant Association, SFFM, or any vendor at the Existing Flower Market, and no injunction is issued preventing the issuance of the Permanent Off-Site Approvals, then during the pendency of such challenge Developer may not effect termination of the Pre-Development Lease prior to the conclusion of such challenge and may either wait for resolution of the challenge, or may proceed with the construction of the Permanent Off-Site Facility consistent with the Permanent Off-Site Approvals and Exhibit F-1 in which case all of the following shall apply:

(a) Unless prohibited by injunction, City Agencies shall not stop the processing or issuance of building permits or approvals due to such judicial challenge and, provided that Developer obtains any necessary Later Approvals, shall allow development of the Permanent Off-Site Facility to proceed consistent with the Permanent Off-Site Approvals; and

(b) Developer shall give SFFM a right to relocate to the Permanent Off-Site Facility after Developer's completion of the Permanent Off-Site Facility in accordance with Exhibit F-1 and pursuant to the Permanent Off-Site Approvals ("**Relocation Option During Litigation Pendency**"); and

(c) Within 60 days of its receipt of Developer's

Relocation Option During Litigation Pendency notice, SFFM shall either: (i) accept the Relocation Option During Litigation Pendency, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for SFFM acceptance of any limitations or restrictions (whether occupancy or improvement related) which may be imposed by the verdict in the judicial challenge (subject to SFFM's right to pursue any approvals or other authorizations to eliminate any compliance issues established by such a verdict), in which case Developer shall complete construction of the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1, and upon the Relocation Date the Pre-Development Lease shall terminate; or (ii) reject or fail to timely exercise the Relocation Option During Litigation Pendency, in which case the Pre-Development Lease shall terminate no less than six (6) months after delivery of the Relocation Option During Litigation Pendency notice, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or

any other site or sites in San Francisco.

3.8.3 In the event that the issuance of any element of the Permanent Off-Site Approvals is delayed as a result of (i) Developer's failure to provide requested additional information or materials from City Agencies or to respond to City Agencies in a prompt and expeditious manner, or (ii) the filing or pendency of an administrative appeal or judicial challenge to any of the Permanent Off-Site Approvals by Developer or its Affiliate, then the corresponding period for the affected Permanent Off-Site Approval shall be extended by the length of such delay.

3.9 City Decisions. Except where otherwise noted, all discretionary decisions relating to City actions under this Article 3 shall be made jointly by the Planning Director and the OEWD Director of Development. The Planning Director and the OEWD Director of Development will consult other City officials as they deem appropriate.

3.10 No City Liability. Following exercise of the Permanent Off-Site Option, OEWD and Planning staff shall use good faith efforts to assist Developer with the development of the Permanent Off-Site Facility at the Alternative Permanent Site. Following exercise of the Stay Option, OEWD and Planning staff shall use good faith efforts to monitor and enforce Developer's obligations to build the New Wholesale Flower Market at the Project Site. But nothing in this Agreement shall create any City liability to Developer, to the Tenant Association, to SFFM, or to any flower market vendor relating to the New Wholesale Flower Market, the Permanent Off-Site Facility, or to the Relocation Matters. All interested persons are given notice, and understand and agree, that completion of the New Wholesale Flower Market or the Permanent Off-Site Facility will likely involve many challenges, and that no particular outcome can be guaranteed. By entering into this Agreement, the City is not guarantying the successful completion of the

replacement market or any other result. The City would not be willing to enter into this Agreement without this provision. Without limiting Developer's indemnity obligations in this Agreement, if and to the extent that City is required to expend any funds or staff time defending this Agreement or any discretionary decisions made by the City related to this Article 3 or the Relocation Matters from a claim made by the Tenant Association or any flower market vendor, such funds and the costs of such staff time shall be included in City Costs.

3.11 Tri-Party Agreement; Declaration of Restrictions. Developer shall comply with its key obligations under the Tri-Party Agreement, including compliance with the rent schedule provided in Exhibit D and other key obligations summarized in Exhibit D. If the Permanent Off-Site Option is exercised, then prior to the earlier to occur of (i) issuance of the first certificate of occupancy for any portion of the Project (provided that SFFM has not rejected or failed to timely exercise either the As Is Relocation Option or the Relocation Option during Litigation Pendency pursuant to Section 3.8.1 or Section 3.8.2, in which case no Declaration of Restrictions shall be recorded against the Alternative Permanent Site), or (ii) commencement of the term of the Permanent Off-Site Master Lease, Developer shall record a Declaration of Restrictions (the "**Declaration of Restrictions**") against the Alternative Permanent Site consistent with the form of document attached in Exhibit D-1 and revised as appropriate with such terms and conditions relating to this Agreement, the Permanent Off-Site Master Lease, and the Alternative Permanent Site, as the City may reasonably require. The term of the Declaration of Restrictions shall end upon termination of the Permanent Off-Site Master Lease and any Deemed Consent Subleases (as defined in the Permanent Off-Site Master Lease), and upon such termination the Declaration of Restrictions shall no longer affect the Alternative Permanent Site. The City requires recordation of the Declaration of Restrictions to assure that Developer's

commitments to the rent subsidies pursuant to the Permanent Off-Site Master Lease and its provision of the public benefit of a continued viable wholesale flower market in San Francisco are enforced. Developer's breach of the obligations described in Exhibit D or in the Declaration of Restrictions, following the notice and cure periods set forth in Section 10.3, shall be a material breach of this Agreement. Developer will provide the City with any information it requests relating to the Declaration of Restrictions, the Alternative Permanent Site, and the Permanent Off-Site Facility in a timely manner, including without limitation information customarily requested by the City's Assessor pursuant to California Revenue & Taxation Code, Sections 71, 441, and 470 and the right to audit revenues and expenditures relating to the Alternative Permanent Site and the Permanent Off-Site Facility. The provisions of this Section 3.11 shall survive the expiration of this Agreement.

4. GENERAL RIGHTS AND OBLIGATIONS

4.1 Project and Project Variant's Compliance with Certain Design Requirements. Concurrently with the approval of this Agreement, certain Planning Code Text Amendments applicable to the Project were approved by the Board of Supervisors, as listed in Exhibit R.

4.2 Development of the Project. Developer shall have the vested right to develop the Project and the Temporary Relocation Facility in accordance with and subject to the provisions of this Agreement, the Approvals, Later Approvals, and Relocation Site Approvals with respect to 2000 Marin, and the City shall consider and process all Later Approvals for development of the Project and the Temporary Relocation Facility at the Temporary Relocation Site, in accordance with and subject to the provisions of this Agreement. The Parties acknowledge (i) that immediately before the approval of this Agreement, the City approved and

granted the Approvals for the Project as listed in Exhibit K, and (ii) that Developer may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals, as needed.

4.3 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement.

4.4 Community Facility Districts. The City intends to form a CFD under the CFD Act to finance or seek reimbursement of certain costs as set forth in the SOMA Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the CFDs or other charges set forth in the Central SOMA Plan, or the issuance of additional bonds or other financing secured by CFD special taxes or the application of bond proceeds consistent with the SOMA Plan. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Central SOMA Plan fees or the CFD special taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in any sale agreement or lease for all or part of the Project Site.

4.5 Transfer Parcel. Before the issuance of the first construction document for the Project, the City, acting through MOHCD, and Developer shall enter into the Transfer Agreement, substantially in the form attached as Exhibit S, for the Transfer Parcel proposed by Developer and approved by MOHCD. Developer shall convey the Transfer Parcel to the City in accordance with the Transfer Agreement on or before issuance of the first certificate of

occupancy for any portion of the Project's first building. The City shall use the Transfer Parcel to develop affordable housing; provided if the City decides after acceptance that it cannot develop affordable housing on the Transfer Parcel, the City may sell the Transfer Parcel and use the net sales proceeds for affordable housing within the boundaries of Central SoMa, Eastern SoMa or Western SoMa Area Plans.

5. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

5.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 5 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is an essential element to this Agreement and is tied to a specific phase of the Project, as described in the Phasing Plan or elsewhere in this Agreement (with each Phase, an "**Associated Community Benefit**"). Time is of the essence with respect to the completion of the Community Benefits.

5.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefit Programs**"):

(a) the construction and development of the New Wholesale Flower Market on the Project Site or alternatively, if the Permanent Off-Site Option is exercised, the construction and development of the Permanent Off-Site Facility at the Alternative Permanent Site in accordance with Article 3;

(b) the rent subsidies per the Tri-Party Agreement, in accordance with the rent schedule included in Exhibit D and the Declaration of Restrictions attached as Exhibit D-1;

(c) the relocation of the Existing Tenants and Pre-Development Subtenants to the Temporary Relocation Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or to the Alternative Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party Agreement, including the requirement that all Existing Tenants and Pre-Development Subtenants shall be moved together at one time (the collective obligations in subparagraphs (a) through (c) shall be referred to as the "**Flower Market Obligations**");

(d) the Workforce Program, as described in Exhibit O;

(e) the Project Open Space and Public Improvements, as described in Exhibit I;

(f) the Transportation Demand Management Program attached as Exhibit J;

(g) conveyance of the Transfer Parcel to the City, in accordance with the Transfer Agreement, at no cost to City;

(h) under the Project Variant, Developer shall construct a subsidized child care center in Phase 1(a), consisting of approximately 23,000 square feet at the

Blocks Building, for lease to a qualified non-profit child care operator for ten (10) years at a cost not exceeding landlord's actual costs for operating expenses;

(i) the payment of $5 million to Mercy Housing California, to pay for costs related to the Sunnydale Hub project, on or before the issuance of the first construction document for the Project; and

(j) the payment of $200,000 within sixty (60) days following the Effective Date, and each anniversary thereafter annually for a period of ten (10) years (i.e. a total of $2,000,000), to a fund designated by the City's Controller in consultation with the City's District 6 Supervisor to support pressure washing and/or steam cleaning of sidewalks and street cleaning efforts in SoMa, as designated by the District 6 Supervisor in consultation with the City's Department of Public Works.

5.1.2 Conditions to Performance of Community Benefits. Developer's obligation to perform each Associated Community Benefit is expressly conditioned upon each and all of the following conditions precedent:

(a) All Approvals and Later Approvals for the applicable Phase to which the Associated Community Benefit is tied shall have been Ultimately Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and Relocation Site Approvals with respect to 2000 Marin, if applicable) have not been obtained or Ultimately Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit with a Phase, the City may withhold a certificate of occupancy for the Building in that Phase until the required Associated Community Benefit is completed or Developer has provided the City with

adequate security for completion of such Associated Community Benefit (*e.g.*, a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney); and

(b) Developer shall have Commenced Construction of the Building in the applicable Phase to which the Associated Community Benefit applies.

5.2 No Additional CEQA Review Required; Reliance on CPE and Addendum for Later Approvals. The Parties acknowledge that the CPE and Addendum prepared for the Project and 2000 Marin as the Temporary Relocation Site, respectively, complies with CEQA. The Parties further acknowledge that (a) the CPE and Addendum contain a thorough environmental analysis of the Project, including the Temporary Relocation Site (with respect to 2000 Marin), and demonstrate that the Project's impacts were previously analyzed in the Central SOMA FEIR and the Addendum, as the case may be; (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the CPE and Addendum, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with the Temporary Relocation Site or a change in the location of the Temporary Relocation Site, the Permanent Site, affordable housing dedication site, or any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

5.3.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all mitigation measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the CPE and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

5.3 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

5.4 City Cost Recovery.

5.4.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 6.7.

5.4.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

5.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 5.5.4 from the City.

5.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such

parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 5.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

5.4.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

5.5 Prevailing Wages. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720 - 1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all persons performing labor in the construction of Public Improvements under this Agreement will be: (1) paid not less than the

Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), and (2) provided the same hours, working conditions, and benefits as provided for similar work performed in San Francisco County in Administrative Code section 6.22(f). Developer further agrees to employ Apprentices on the Public Improvement work in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing the Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. City's Office of Labor Standards Enforcement ("**OLSE**") enforces labor laws, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

5.6 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or

this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

6. VESTING AND CITY OBLIGATIONS

6.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Accordingly, the City in granting the Approvals and vesting them through this Agreement is

limiting its future discretion with respect to Later Approvals and Relocation Site Approvals to the extent they include elements that were approved as part earlier Approvals. The criteria for City review and approval of Later Approvals is set forth in Section 6.3. Consequently, the City shall not use its discretionary authority in considering and approving an application for Later Approvals or Relocation Site Approvals with respect to 2000 Marin to change the policy decisions reflected by the Approvals or otherwise to prevent or to delay development of the Project or the Project Variant as set forth in the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access and parking (including parking ratios), and the Prop. M allocation made for the Project on the Effective Date (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals and Relocation Site Approvals with respect to 2000 Marin, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval and Relocation Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

6.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules

and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 6.7, and (iii) this Agreement (collectively, "**Applicable Laws**").

6.3 Criteria for Later Approvals. Developer shall be responsible for obtaining applicable Later Approvals before the start of construction that requires such approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval based upon an item or element that is consistent the Approvals, and shall consider all such applications in accordance with City's customary practice, normal discretion and Applicable Laws, subject to the requirements of this Agreement. The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Approvals and the Planning Code, and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" or the Temporary Relocation Site under this Agreement.

6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from Developer of a completed application (with any required supporting documentation) for one of more Later Approvals, Relocation Site Approvals, or Permanent Off-Site Approvals, the City shall use reasonable efforts to promptly commence and complete all steps necessary to act on such applications in a timely way and in accordance with applicable Laws.

6.5 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Mechanical Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, and the Public Works Code and Subdivision Code and other uniform construction codes applicable on a City-Wide basis. This shall not be construed to prohibit exceptions, equivalencies, or other administrative relief available under such Codes.

6.6 Denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. If the City denies any application for a Later Approval that implements a Building that is part of the Project or a Relocation Site Approval or Permanent Off-Site Approval for the Temporary Relocation Site or Alternative Permanent Site, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with this Agreement, earlier Approvals, and Applicable Laws, and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, earlier Approvals and Applicable Laws, and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

6.7 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**New City Laws**") shall apply to the Project, the Project Site, and the Temporary Relocation

Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

6.7.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project or the Temporary Relocation Site at 2000 Marin, or any part thereof, or otherwise require any reduction in the square footage, number, or size of the proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from those permitted under the Approvals;

(b) limit or reduce the height, bulk, or mass of the Project, or any part thereof, or otherwise require any reduction in the height, bulk, or mass of individual Buildings or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, or the amount or location of parking or loading from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the consideration of the Phase 1(b) Office Allocation as specified in Section 6.8(b), or demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

(i) impose any regulation or other requirement that controls commercial rents or purchase prices charged within the Project or on the Project Site, except as set forth in this Agreement and the Tri-Party Agreement;

(j) materially limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 6.9.2); or

(l) Reduce the amount of allowable parking or loading for the Project or the Temporary Relocation Site at 2000 Marin; or

(m) Negatively alter the Phase 1(b) Office Allocation priority in Section 6.8(b).

6.7.2 Developer may, at its sole discretion, elect to have a New City Law that conflicts with this Agreement be applied to the Project or the Project Site by giving the City written notice of its election to have a New City Law applied, in which case such New City Law shall be deemed to be an Existing Standard;

6.7.3 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and

development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge parcels within the Project Site as is required or may be desirable in order to developer a particular phase of the Project the Project or to lease, mortgage or sell all or some portion of it. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals or Later Approvals.

6.8 Proposition M Office Allocation. The Project includes up to 2,061,380 gross square feet ("**GSF**") of office development proposed to be constructed in three phases: (i) Phase 1(a) with up to 1,384,578 GSF of office, (ii) Phase 1(b) with up to 351,895 GSF of office; and (iii) Phase 1(c) with up to 324,907 GSF of office. Before the Effective Date, by Motion No. 20485 (the "**Office Allocation Motion**"), the Planning Commission adopted findings pursuant to Planning Code Section 321(b)(1) that up to 2,061,380 GSF of office development at the Project Site contemplated by this Agreement and the Central SOMA Plan and Design Guidelines promotes the public welfare, convenience and necessity, and in doing so it considered the criteria in Planning Code Section 321(b)(3)(A)-(G). The findings contained in the Office Allocation Motion are incorporated into this Agreement. Because the office development contemplated by the Project has been found to promote the public welfare, convenience and necessity, the determination required under Section 321(b), where applicable, will be deemed to have been

made for the entire Project (i.e., up to 2,061,380 GSF of office development undertaken consistent with the Project).

(a) In the Office Allocation Motion, the Planning Commission also granted up to 1,384,578 GSF of Prop M office allocation for Phase 1(a).

(b) Additional Prop M allocations for Phase 1(b) and Phase 1(c) are necessary for completion of the Project and to support the viability of the Associated Public Benefits for each respective Phase. An application for the Phase 1(b) and 1(c) Prop M allocations is on file with the Planning Department under Case No. 2017-000663OFA. If Developer is not then in default under this Agreement, the Planning Commission shall consider the Phase 1(b) office allocation at its first regularly scheduled hearing on or after October 17, 2021, unless otherwise requested by Developer. Developer shall notify the Planning Director not less than 60 days in advance of the hearing date to ensure that the matter is added to the calendar, and Developer has the right to make changes to its existing application at any time before such notification date. Provided the design of the Project remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to additional office allocation of no less than 351,895 gsf under Sections 320-325 over office development proposed elsewhere in the City, subject to the existing priorities previously given to (a) the Mission Bay South Project Area; (b) the Transbay Transit Tower proposed for development on Lot 001 of Assessor's Block No. 3720; and (c) the Treasure Island development project. Notwithstanding the above, no office development project can be approved that would cause the then applicable annual limitation contained in Planning Code Section 321 to be exceeded, and the Planning Commission shall consider the design of the Project to confirm that it remains consistent with the Planning Commission's findings under Section 321(b)(3)(A)-(G) in the Office Allocation Motion. The

requirements for Planning Commission approval described above will apply to the Project except to the extent such application would be prohibited by applicable law.

(c) Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which either the Stay Option or the Permanent Off-Site Option is exercised by the City to obtain a site permit for office development for the applicable phase of the Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

6.9 Fees and Exactions.

6.9.1 Generally. The Project and the Temporary Relocation Site at 2000 Marin shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 6.7, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or the Temporary Relocation Site at 2000 Marin, or impose new conditions or requirements for the right to develop the Project or the Temporary Relocation Site at 2000 Marin (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 6.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

6.9.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project (or the Project Variant) or components thereof except for (i) those Impact Fees and

Exactions specifically set forth on Exhibit P, and (ii) the SFPUC Capacity Charges, as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the Parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined; provided (i) in determining the amount of the Impact Fees and Exactions during the Initial Term only (as extended by Litigation Extension, if any), the rates will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid, and (ii) the initial Jobs Housing Linkage Fee shall not be calculated from the Effective Date, but instead shall be set based on legislation per Ordinance No. 251-19 (File No. 190548) to update the Jobs Housing Linkage Fee if adopted before the date of payment (or, once adopted, the updated Fee amount will apply to payments made after the date of adoption), and thereafter shall adjust under Planning Code Section 409 as set forth in clause (i) above. During the Extension Term (if any), Developer shall be subject to any increase or decrease in the fee amount payable and any changes to the methodology of calculation (e.g., use of a different index to calculate annual increases), but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date. No Impact Fees or Exactions shall apply to the use of the Temporary Relocation Site at 2000 Marin for pre-existing uses or for new spaces constructed for flower market tenants.

(a) Jobs-Housing Linkage Fee and Affordable

Housing Site Dedication. , Developer may satisfy all or a portion of its obligation under Planning Code Section 413 by utilizing the Transfer Parcel as a land dedication alternative (the "**JHL Fee Credit**") in accordance with Planning Code Sections 249.78(e)(2) and 413.7.

(b) Central SoMa Legacy Business and PDR Support Fund. In the event the Permanent Off-Site Option is exercised pursuant to Article 3, Developer shall deposit Twenty Million Dollars ($20,000,000) into a special fund or other account designated by the City (the "Central SoMa Legacy Business and PDR Support Fund") prior to issuance of the first construction document for the Project. Central SoMa Legacy Business and PDR Support Fund shall be used by the City to provide annual business grants to the Master Tenant under the Permanent Off-Site Master Lease each year beginning in the fourth year of the lease term, up to the earlier to occur of (i) thirty-four (34) years after commencement of the Permanent Off-Site Master Lease, or (ii) exhaustion of funds in the Central SoMa Legacy Business and PDR Support Fund. The amount of such annual grant shall be determined by the City's Controller in consultation with the OEWD Director of Development, and shall be based upon the amount which, in the Controller's best judgment, will assure a continuous revenue stream during the lease term and will also provide necessary support to the Master Tenant. Notwithstanding the foregoing, if the City has not waived Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000) in Impact Fees and Exactions prior to issuance of the first construction document for the Project, then Developer shall not have any obligation to deposit funds into the Flower Market Legacy Business Fund. At the end 34 years, any unexpended funds shall be retained by the City to be used for job training, job

retention, and other economic development purposes or shall be deposited into the fund from which it was diverted or the relevant successor fund.

(c) Eastern Neighborhoods Infrastructure Fee and Gateway Marker. Notwithstanding the provisions of Planning Code Section 423, Developer shall fund the design and complete the construction of an arch, monument, pillar or other physical marker, in a public location approved by the Planning Director, identifying the San Francisco Filipino Cultural Heritage District ("**Gateway Marker**"). The construction and permitting of the Gateway Marker shall be subject to the Planning Director's approval as to design and location, at his or her sole discretion following any required environmental review. Upon approval of the design, if any, the City shall enter into an in-kind agreement, using the City's standard form, to provide credit against Developer's Eastern Neighborhoods Infrastructure Impact Fees under Planning Code Section 423 in an amount equal to Developer's third party design and construction costs but not to exceed $300,000. In the event the Gateway Marker is not fully approved and permitted by the City three years after the Effective Date, the City may instead allocate $300,000 of the Developer's Eastern Neighborhoods Infrastructure Impact Fees paid, or to be paid, to the Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District, administered by the Mayor's Office of Housing and Community Development under Administrative Code Section 10.100-52.

6.9.3 Processing Fees. Developer shall pay all Processing Fees in effect, on a City-wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

6.10 Changes in Federal or State Laws.

6.10.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

6.10.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply

with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 6.8.4, as applicable.

6.10.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

6.10.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 6.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 6.8 would materially and adversely affect or limit the Community Benefits (a "**Law Adverse to the City**"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 6.8.4, the Parties agree to meet and

confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Associated Community Benefits for each Building completed as set forth in Section 5.1.

6.11 No Action to Impede Approvals. Except and only as required under Section 6.8 the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 6.6.1.

6.12 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and

providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9; (v) the Effective Date of the Agreement; and (vi) the names of the Mortgagee that are subject to receiving notices under Section 11.3. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request. The City acknowledges that third parties with a property interest in the Project Site, such as mortgagees, acting in good faith, may rely upon such a certificate.

6.13 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 6. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Planning Code and the Central SOMA Plan.

6.14 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings,

and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

7. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building commenced by Developer as set forth in Section 5.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be

avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when each Phase and all of the Associated Community Benefits tied to that Phase have also been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit N for the applicable property.

8.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals, and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals, and any Later Approvals, are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department (in consultation with OEWD) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. Each City Agency responsible for reviewing any Later Approvals shall designate a single employee responsible for working with Developer and the Planning Department: (i) to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) to interface with City staff responsible for reviewing

any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

8.2.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

8.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project is commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal. Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project (and therefore, there is more than one party that assumes obligations of “Developer” under this Agreement), then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project and only as to such portion,

and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

8.2.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

8.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals.

8.4 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement and the Approvals in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

9.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 9.2.

9.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation (not including any proprietary or confidential information, to the extent any exists), Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

9.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be

deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

9.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

9.2.4 Default. The rights and powers of the City under this Section 9.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of a Default.

10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

10.1 Enforcement. The only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and

Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

10.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 10.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 10.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 10.3.

10.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any

notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations, provided City shall have the right to withhold Later Approvals for all or any part of the Project Site if Developer fails to fulfill the Flower Market Obligations as and when required under this Agreement. Subject to the foregoing, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site. For purposes of this Section 10, a Party shall include all of its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any termination or other remedy against that Party may include the same remedy against all such Affiliates.

10.4 Remedies.

10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 10.4.3, 10.4.4, and 10.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

10.4.2 Termination. Subject to the limitation set forth in Section 10.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date

set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 10.3 and 13.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

10.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 10.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or

will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 10.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

10.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which Developer is in Default or Developer has failed to pay amounts due to the City under this Agreement; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City (subject to the Flower Market Obligation provisions described below). The City shall have the right to withhold a final certificate of occupancy within a Phase until all of the Associated Community Benefits tied to that Phase, together with the Flower Market Obligations, have been completed or Developer has provided the City with adequate security for completion of such Community Benefit (*e.g.*, a bond or letter of credit) as

approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney). For a Phase to be deemed completed, Developer shall have also completed all of the public open spaces and improvements for that Phase as set forth in Exhibit H or in a Later Approval; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance. Notwithstanding anything to the contrary above, the City shall have the right to withhold all certificates of occupancy and other Later Approvals Project-wide (against all Developers) if the Flower Market Obligations have not been satisfied when required. If the Payment Option has not been exercised, the Parties intend that the Post-Development Subtenants will be moved back to the Project Site first, and agree that City can withhold certificates of occupancy and Later Approvals for space at the Project Site until all of the Post-Development Subtenants (not including those who elect to move elsewhere) have moved back to the Project Site in accordance with the Flower Market Obligations.

10.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in

such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

11. FINANCING; RIGHTS OF MORTGAGEES

11.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site.

11.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 11.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 5.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

11.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

11.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 11.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period:

(i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, provided that such period is tolled for any period during which the Mortgagee is prohibited from proceeding with foreclosure proceedings, e.g. due to a bankruptcy filing, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

11.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 5.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant

to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

11.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

11.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

12. AMENDMENT; TERMINATION; EXTENSION OF TERM

12.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided that following a Transfer, the City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 8.2.2, 8.4.2, and 12.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent

it affects any rights or obligations of a City department, after consultation with that City department).

12.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to Commence Construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

12.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Phase that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Phase that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction,

interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 12.3 shall survive the termination of this Agreement.

12.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and no change to the Project that is permitted under the Central SOMA Plan shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project (or the Project Variant) as described in the Exhibits in keeping with its customary practices and the Central SOMA Plan, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

12.5 Extension Due to Legal Action or Referendum; Excusable Delay.

12.5.1 Litigation and Referendum Extension. If any litigation is filed challenging the Central SOMA Plan, the Central SOMA Plan FEIR, this Agreement, or an Approval having the direct or indirect effect of delaying this Agreement, or any Approval (including but not limited to any CEQA determinations), Relocation Site Approval, or Permanent Off-Site Approval that is initially granted prior to the Relocation Date, including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, this Agreement, Approval, Relocation Site Approval, or Permanent Off-Site Approval that is initially granted prior to the Relocation Date is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals that are initially granted prior to the Relocation Date shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals initially granted prior to the Relocation Date, the date of the initial grant of such Approval, Relocation Site Approval, or Permanent Off-Site Approval initially granted prior to the Relocation Date) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

12.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of

terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

14.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Transferee (*i.e.,* the person or entity that is the Developer for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

14.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M (including the indemnifications, the agreement and covenant not to challenge the enforceability

of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review within thirty (30) days after receipt, with such review being limited to confirming the Assignment and Assumption Agreement satisfies the requirements of this Agreement. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 13.1 shall not require the transfer of land or any other real property interests to the CMA.

14.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 13.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 9 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

14.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the

Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.

14.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

14.6 Rights of Developer. The provisions in this Section 13 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

15. DEVELOPER REPRESENTATIONS AND WARRANTIES

16.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

16.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the

agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

16.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

16.4 Notification of Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating

officer; any person with an ownership interest of more than 10% in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

16.5 Other Documents. To the current, actual knowledge of _____ and _____, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

16.6 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

17. MISCELLANEOUS PROVISIONS

17.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

17.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and

made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

17.3 Binding Covenants; Run With the Land. Pursuant to Section 65864 et seq. of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 13, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 13, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Sections 1468-1470.

17.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

17.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

17.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

17.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

17.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

17.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

17.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

17.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other or additional person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, Flower Mart Project

To Developer:

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

with a copy to:

Reuben, Junius, & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attn: Daniel Frattin or Tuija Catalano

17.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to

Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

17.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

17.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

17.15 Tropical Hardwood and Virgin Redwood. The City 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.

17.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the

extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

17.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, or its successors and assigns, in the event of any Default by City, or for any amount, which may become due to Developer, or its successors and assigns, under this Agreement.

17.18 Non-Liability of Developer Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of Developer or affiliate of Developer shall be personally liable to City, or its successors and assigns, in the event of any Default by Developer, or for any amount, which may become due to City, or its successors and assigns, under this Agreement.

17.19 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved on _____, 2019
Board of Supervisors Ordinance No. _____

APPROVED AND AGREED:

By: _____
Naomi Kelly, City Administrator

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited liability company

By: Kilroy Realty, L.P,
a Delaware limited partnership,
its Sole Member

By: Kilroy Realty Corporation,
a Maryland corporation,
its General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form:

DENNIS J. HERRERA, City Attorney

By:

Elizabeth A. Dietrich
Deputy City Attorney

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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 San Francisco)

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

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State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT D

Rent Schedule and Key Tri-Party Agreement Commitments

Rent Schedule:

Lease Years 1-4. Annual Base Rent of $250,000/year.

Lease Years 5–Last; Increases in Base Rent. On the first day of Lease Year 5, the Base Rent shall be adjusted to the amount that Base Rent would have been (calculated as if the same been adjusted on the first day of Lease Years 2, 3, 4 and 5 pursuant to the annual CPI Adjustment procedure set forth in this Section 3.2 hereinbelow, inclusive of the 1% - 4% collar mechanism), had the Base Rent for Lease Year 1 been the sum of (x) a Monthly Rental Rate per Rentable Square Foot of $1.35, and (y) the actual rentable square footage of the Premises as determined pursuant to Section 1.2 of this Lease, above. On the first day of Lease Year 6 and the commencement date of each subsequent Lease Year thereafter occurring during the Lease Term (the "**CPI Adjustment Date**"), the Base Rent shall be adjusted (a "**CPI Adjustment**") to equal the product of (i) the Base Rent, as previously adjusted and in effect as of the applicable CPI Adjustment Date, and (ii) a fraction, the numerator of which is the Adjustment Month Index, as that term is defined below, occurring prior to such CPI Adjustment Date, and the denominator of which is either (x) for the first adjustment during the Lease Term, the Base Month Index, and (y) for all subsequent adjustments, the Adjustment Month Index used as the numerator for the prior year's adjustment; provided, however, that in no event shall the applicable CPI Adjustment result in the adjusted Base Rent being less than one percent (1%) higher or more than four (4%) higher than the Base Rent then in effect, as previously adjusted. For purposes of this Section 3.2, (a) "**Base Month Index**" shall be the "Index," as that term is defined below, for the month which is three (3) months prior to the month in which the first Lease Commencement Date occurs; (b) "**Adjustment Month Index**" shall be the Index for the same month as the Base Month Index in each succeeding calendar year; and (c) "**Index**" means the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area (base year 1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics. If the base of the Index changes from the 1982-84 base (100), the Index shall, thereafter, be adjusted to the 1982-84 base 100 before the computation indicated above is made. If the Index cannot be converted to the 1982-84 base or if the Index is otherwise revised, the adjustment under this Section 3.2 shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics. If the Index is at any time no longer published, a comparable index generally accepted and employed by the real estate profession, as determined by Landlord in Landlord's reasonable discretion, shall be used.

Tri-Party Agreement Context:
The following provides a summary of the key commitments in the Tri-Party Agreement. This summary is not intended and is not to be construed as altering the terms in the Tri-Party Agreement in any manner whatsoever. To the extent a conflict exists between this Summary and the Tri-Party Agreement, the Tri-Party Agreement shall prevail.

Parties: 1) Developer (i.e. KR Flower Mart, LLC)
2) Tenant Association (i.e. San Francisco Flower Market Tenants' Association)
3) San Francisco Flower Mart LLC

Key Commitments:

- Developer shall construct a new wholesale flower market and relocate the occupants thereto at Developer's sole cost, and provide interior improvements at Developer's sole cost if the Permanent Off-Site Option is exercised or provide an improvement allowance for such interior improvements if the Stay Option is exercised, with Developer further funding certain project management costs to be incurred by San Francisco Flower Mart LLC in connection with the design and construction of such interior improvements.
- Developer to reimburse San Francisco Flower Mart LLC for certain legal fee expenses incurred by San Francisco Flower Mart LLC with regard to the negotiation of the Tri-Party Agreement and master leases.
- Developer shall provide to subtenants, via a rent credit to San Francisco Flower Mart LLC (which in turn shall be provided as a credit to subtenants), a gross rent subsidy of $0.339 per rentable square foot per month throughout the first 15 years of the term of the Post-Development Master Lease or the Permanent Off-Site Master Lease, as applicable.
- In the event of a default-based termination of the Pre-Development Master Lease, the Post-Development Master Lease or the Permanent Off-Site Master Lease, as the case may be, Developer is obligated to recognize subtenants during the otherwise existing term of such master leases, to the extent the corresponding subleases are on the pre-approved form of sublease and exceed the sublease rent floor specified in such master leases.

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code

Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

FOR PROPERTY AT 5th and BRANNAN STREETS

Block 3778: Lots 1B, 2B, 4, 5, 47 and 48

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this ____ day of _____, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and KR FLOWER MART LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer owns and operates the approximately 295,144 square foot site along Brannan Street between 5th and 6th Streets, on Assessor's Block 3778, Lots 001B, 002B, 004, 005, 047 and 048, composed of the 141,992 square feet of flower market, approximately 4,900 square feet of existing retail uses, 45,549 square feet of vacant PDR space, and surface parking lots, as more particularly described on Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed use development that will include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing approximately: 2,032,165 square feet of office space; 89,459 square feet of retail space; 115,000 rentable square feet of vendor space (including accessory retail space) for a new wholesale

flower market; 30 loading spaces; and 769 parking spaces; all as more particularly described in Exhibit B.1 (the "**Project**") and shown in Exhibit C.1. The exact numbers listed above may change, in keeping with Planning Department standard practices consistent with the Planning Code.

C. In order to satisfy the tenants' request to have an Permanent Off-Site Option (per Article 3), the Developer is also seeking entitlements for a revised project that replaces the on-site new wholesale flower market with approximately 113,036 square feet of other uses at the Project Site, consisting of a development with approximately: 2,061,380 square feet of office space; 90,976 square feet of retail space; 22,690 square feet of childcare use, including outdoor activity area; 9 loading spaces; and 632 vehicle parking spaces, all as more particularly described in Exhibit B.2 and shown in Exhibit C.2 (the **"Project Variant**"). All references in this Agreement to the "**Project**" shall mean (1) before selection under Article 3, both the Project and the Project Variant, and (2) following selection under Article 3, either the Project or the Project Variant, whichever is selected.

D. As part of the Project, Developer will relocate the existing flower market tenants to an interim facility constructed by Developer at the Temporary Relocation Site before Commencing Construction of the Project. Upon completion of the Project, Developer shall pay to move the flower market tenants back to the Project Site under the Project or to the Permanent Off-Site Facility under the Project Variant, as applicable. Alternatively, in the event the Permanent Off-Site Option is exercised, Developer may skip the Temporary Relocation Site and move the flower market vendors straight to the Permanent Off-Site Facility if the Permanent Off-Site Facility has been completed by the time Developer initially moves the flower market vendors from the Project Site. These commitments by Developer, together with certain rent

schedule commitments for a period of at least 34.5 years, are also made in a tri-party agreement among Developer, Tenant Association, and SFFM, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**").

E. The Project is anticipated to generate an annual average of approximately 8,050 construction jobs during construction and, on completion, an approximately $29.9 million annual increase in general fund revenues to the City and approximately $9.3 million annual increase in non-general fund revenues to the City.

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56. The Parties acknowledge that this Agreement is entered into in consideration of their respective burdens and benefits, including the representations and warranties, in this Agreement. The Parties also acknowledge that this Agreement is entered into to encourage and maintain effective land use planning.

G. As a result of the development of the Project in accordance with this Agreement, the City has determined that additional benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These

additional benefits are essential elements for this Agreement and include development of a new permanent home for the flower market, with subsidized rents, the dedication of a housing parcel, onsite childcare, workforce commitments and certain public improvements as described herein.

H. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), "**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project. Pursuant to Government Code Section 65867.5, this Agreement is a legislative act that is approved in an ordinance by the Board of Supervisors.

I. The Project Site is located in the recently adopted Central SOMA Plan area, which was approved by the Board of Supervisors on November 27, 2018 and December 4, 2018, pursuant to Ordinance Nos. 282-18, 296-18 and 280-18, Board of Supervisors File Nos. 180490, 180184, and 180185, respectively, which among other actions rezoned the Project Site for the CMUO (Central SOMA Mixed-Use Office) and MUR (Mixed Use Residential) zoning districts, and the 270-CS and 160-CS height and bulk districts.

J. The City analyzed the environmental impacts of the development density associated with the Project in the Central SOMA Plan Final Environmental Impact Report (**"Central SOMA FEIR"**), certified by the Planning Commission in Motion No. 20182, on May

10, 2018. Potential development at 2000 Marin Street, as the Temporary Relocation Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report (**"Bayview FEIR**"), which was certified by the San Francisco Redevelopment Agency on March 2, 2006. On July 3, 2019, the Environmental Review Officer (**"ERO"**) issued a Community Plan Exemption ("**CPE**") and Addendum for the Project and the Temporary Relocation Site at 2000 Marin Street, including the mitigation monitoring and reporting program (**"MMRP"**). The CPE were prepared in accordance with CEQA and issued by the Planning Department in Case Nos. 2015-004256ENV. Copies of the Certificate of Determination are on file with the Board of Supervisors in File Nos. 190682 and 190681, and are incorporated herein by reference.

K. On July 18, 2019, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission granted Approvals for the Project and adopted the MMRP, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). The information in the Central SOMA FEIR, Bayview FEIR, and CPE were considered by the City in connection with approval of this Agreement.

L. On _____, 2019, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made

the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2019, the Board adopted Ordinance Nos. [_____] approving this Agreement (File No. 190682) and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2020.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 **"Addendum"** has the meaning set forth in Recital J.

1.2 "**Administrative Code**" means the San Francisco Administrative Code.

1.3 "**Affiliate" or "Affiliates**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "**control**" means the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.4 "**Agreement**" means this Development Agreement, including the Recitals and Exhibits.

1.5 "**Alternative Permanent Site**" means a Viable site, in lieu of the Project Site, for the location of the Permanent Off-Site Facility, pursuant to Section 3 to this Agreement, in the event the Permanent Off-Site Option is exercised.

1.6 "**Alternative Option Period**" has the meaning set forth in Section 3.5.

1.7 "**Annual Review Date**" has the meaning set forth in Section 9.1.

1.8 "**Applicable Laws**" has the meaning set forth in Section 6.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.9 "**Approvals**" means the City approvals and entitlements listed on Exhibit K.

1.10 "**Assignment and Assumption Agreement**" has the meaning set forth in Section 13.2.

1.11 "**As Is Relocation Option**" has the meaning set forth in Section 3.8.1(b).

1.12 "**Associated Community Benefits**" is defined in Section 5.1.

1.13 **"Bayview FEIR"** shall have the meaning set forth in Recital J.

1.14 "**Board of Supervisors**" or "**Board**" means the Board of Supervisors of the City and County of San Francisco.

1.15 "**Building**" means the Market Hall Building, the Blocks Building, or the Gateway Building (or collectively, the "**Buildings**"), as generally described in Exhibit B.

1.16 **"Central SOMA FEIR"** shall have the meaning set forth in Recital J.

1.17 "**Central SOMA Plan**" shall have the meaning set forth in Recital I.

1.18 "**CEQA**" has the meaning set forth in Recital H.

1.19 "**CEQA Findings**" means the CEQA findings made by the Planning Commission and the Board of Supervisors in approving this Agreement.

1.20 "**CEQA Guidelines**" has the meaning set forth in Recital H.

1.21 "**CFD**" means a community facilities district formed over all of the Project Site that is established under the CFD Act in accordance with the Central SOMA Plan.

1.22 "**CFD Act**" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Act, as amended from time to time.

1.23 "**Chapter 56**" has the meaning set forth in Recital F.

1.24 "**City**" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.25 "**City Agency**" or "**City Agencies**" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFFD, SFMTA, SFPUC, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction or discretion of a City department that has not approved or consented to this Agreement in connection with the issuance or denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

1.26 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

1.27 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including without limitation reasonable attorneys' fees and costs and third party costs relating to the Project, the Temporary Relocation Facility, and the Permanent Off-Site Facility, but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 10.6 when Developer is the prevailing party.

1.28 "**City Parties**" has the meaning set forth in Section 5.6.

1.29 "**City Report**" has the meaning set forth in Section 9.2.2.

1.30 "**City-Wide**" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.31 "**CMA**" is defined in Section 13.1.

1.32 "**Commence Construction**" means the commencement of physical construction of the applicable Building foundation on the Project Site.

1.33 "**Community Benefits**" has the meaning set forth in Section 5.1.

1.34 "**Community Benefits Program**" has the meaning set forth in Section 5.1.

1.35 "**CPE**" has the meaning set forth in Recital J.

1.36 "**Declaration of Restrictions**" has the meaning set forth in Section 3.11.

1.37 **"Default**" has the meaning set forth in Section 10.3.

1.38 "**Design Guidelines**" means the Key Development Site Guidelines adopted as part of the Central SOMA Plan.

1.39 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

1.40 "**Development Agreement Statute**" has the meaning set forth in Recital F, as in effect as of the Effective Date.

1.41 "**DPW**" means the San Francisco Department of Public Works.

1.42 "**Effective Date**" has the meaning set forth in Section 2.1.

1.43 "**Enacting Ordinance**" has the meaning set forth in Recital M.

1.44 "**Excusable Delay**" has the meaning set forth in Section 12.5.2.

1.45 "**Exercise Notice**" has the meaning set forth in Section 3.4.

1.46 **"Existing Flower Market"** means the improvements existing on the Project Site as of Effective Date, excluding the Zappettini Parcel.

1.47 "**Existing Standards**" has the meaning set forth in Section 6.2.

1.48 "**Existing Subtenant**" means each of those existing flower mart tenants who has a sublease for space at the Existing Flower Market as of the Relocation Date. Only Existing Subtenants in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent Off-Site Facility under the Permanent Off-Site Option.

1.49 "**Existing Uses**" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the

Planning Code) on the Project Site as of the Effective Date.

1.50 "**Extended Alternative Option Period**" has the meaning set forth in Section 3.4.

1.51 "**Federal or State Law Exception**" has the meaning set forth in Section 6.10.1.

1.52 "**Flower Market Obligations**" means Developer's obligations described in Article 3 and in subsection 5.1.1.

1.53 "**Foreclosed Property**" is defined in Section 11.5.

1.54 "**General Plan Consistency Findings**" has the meaning set forth in Recital K.

1.55 "**Gross Floor Area**" has the meaning set forth in Planning Code Section 102 as of the Effective Date.

1.56 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, including offsets for any applicable fee credits, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to the Transportation Sustainability Fee (per Planning Code Section 411A), the Jobs-Housing Linkage Fee (per Planning Code Section 413), Child Care Fee (per Planning Code Section 414), Art Fee (per Planning Code Section 429), School Impact Fee (California Education Code Section 17620), Eastern Neighborhoods Infrastructure Impact Fee (per Planning Code Section 423), or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees (including CFD special taxes due under the Central SOMA Plan), SFPUC

Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws. A sample calculation of the applicable Impact Fees and Exactions is included in Exhibit P.

1.57 "**Interim Lease**" means a lease entered into by Developer, as tenant, and the owner of the Temporary Relocation Site, for the temporary flower market, consistent with the requirements of the Tri-Party Agreement and this Agreement.

1.58 "**JHL Fee Credit**" has the meaning set forth in Section 6.9.1(a).

1.59 "**Later Approval**" means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, design review approvals, improvement agreements, use permits, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, street space permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.60 "**Law(s)**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" shall refer to any or all Laws as the context may require.

1.61 "**Law Adverse to City**" is defined in Section 6.10.4.

1.62 "**Law Adverse to Developer**" is defined in Section 6.10.4.

1.63 "**Litigation Extension**" has the meaning set forth in Section 12.5.1.

1.64 "**Losses**" has the meaning set forth in Section 5.6.

1.65 "**Master Tenant**" means the direct tenant or subtenant of Developer at any of the Existing Flower Market, the Temporary Relocation Facility, the Permanent Off-Site Facility, or the New Wholesale Flower Market, as applicable.

1.66 "**Material Change**" means any modification that would materially alter the rights, benefits or obligations of the City or Developer under this Agreement that is not consistent with the Central SOMA Plan or that (i) extends the Term, (ii) changes the permitted uses of the Project Site, (iii) decreases the Community Benefits, (iv) increases the maximum height, density, or bulk by more than ten percent (10%) the size of the Project or changes the parking ratios (other than as permitted under the Central SOMA Plan), or (vi) reduces the applicable rate for the Impact Fees and Exactions.

1.67 "**Mitigation Measures**" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.

1.68 "**MMRP**" means that certain mitigation monitoring and reporting program attached hereto as Exhibit L.

1.69 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site or the Alternative Permanent Site to secure an obligation made by the property owner or holder of a leasehold interest.

1.70 "**Mortgagee**" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.71 "**Municipal Code**" means the San Francisco Municipal Code.

1.72 "**New City Laws**" has the meaning set forth in Section 6.7.

1.73 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market (including 10,000 square feet of accessory retail) to be constructed on the Project Site as part of the Project, as more particularly described in the project description in Exhibit B.1.

1.74 "**Non-City Agency**" means Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement.

1.75 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.76 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.77 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee.

1.78 **"Permanent Off-Site Approvals"** means the Permanent Off-Site Building Approvals and the Permanent Off-Site Entitlement Approvals.

1.79 "**Permanent Off-Site Building Approvals**" means the first site permit or first building permit issued by the City or any City Agency, other than the Approvals, for the Alternative Permanent Site and/or the Permanent Off-Site Facility.

1.80 **"Permanent Off-Site Entitlement Approvals"** means any land use approval or entitlement issued by the City or any City Agency, other than the Approvals, that are necessary for the use of the Permanent Off-Site Facility and the Alternative Permanent Site as a wholesale flower market with ancillary retail uses, including without limitation Planning Commission and/or Planning Department entitlements, Planning Code amendments, and completion of CEQA review.

1.81 "**Permanent Off-Site Facility**" means a permanent flower market facility to be constructed at the Alternative Permanent Site, in lieu of the New Wholesale Flower Market at the Project Site, pursuant to Section 3 and Exhibit F-1 to this Agreement, in the event the Permanent Off-Site Option is exercised, as more particularly set forth in Section 3.7.

1.82 "**Permanent Off-Site Master Lease**" means a lease for the Alternative Permanent Site entered into by Developer, as the landlord, and Master Tenant, as the tenant, for a term of no less than 34.5 years or 35 years, as approved by the City, after the relocation of the Vendors.

1.83 "**Permanent Off-Site Notice**" has the meaning set forth in Section 3.3.

1.84 "**Permanent Off-Site Option**" means an option whereby in lieu of a New Wholesale Flower Market at the Project Site, a Permanent Off-Site Facility is constructed at the Alternative Permanent Site and leased pursuant to the Permanent Off-Site Master Lease.

1.85 "**Phase**" means either Phase 1(a), Phase 1(b) or Phase 1(c), as applicable.

1.86 "**Phase 1(a)**" means the issuance of a certificate of occupancy and/or final completion for the Blocks Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H. If the Stay Option is exercised, Phase 1(a) will not be deemed complete until all Post-Development Subtenants who have entered into a Post-

Development Sublease have been relocated back to the Project as part of Developer's relocation program in accordance with the Tri-Party Agreement.

1.87 "**Phase 1(b)**" means the issuance of a certificate of occupancy and/or final completion for the Market Hall Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.88 "**Phase 1(c)**" means the issuance of a certificate of occupancy and/or final completion for the Gateway Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.89 "**Planning Code**" means the San Francisco Planning Code.

1.90 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.91 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

1.92 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.

1.93 **"Post-Development Subtenant"** means each of those Existing Subtenants and Pre-Development Subtenants who pursuant to the terms of the Tri-Party Agreement enter into a Post-Development Sublease with the owner or master lessor thereof at the New Wholesale Flower Market.

1.94 **"Post-Development Sublease"** means a lease agreement at the New Wholesale Flower Market between Developer or the master lessor of the New Wholesale Flower Market and each Post-Development Subtenant.

1.95 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who, in accordance with the terms of the Tri-Party Agreement (and the Pre-Development Lease defined therein), entered into a Pre-Development Sublease for space at the Existing Flower Market or the Temporary Relocation Site, as applicable. Only Pre-Development Subtenants that remain in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent Off-Site Facility under the Permanent Off-Site Option.

1.96 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.97 "**Project**" means either the Project or the Project Variant, once determined in accordance with Article 3, together with Developer's rights and obligations under this Agreement.

1.98 **"Project Open Space"** means the privately owned, publicly accessible open space described in Exhibit I.

1.99 "**Project Site**" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

1.100 **"Project Variant"** means the mixed use development project described in Recital C and Exhibit B.2 and the Approvals.

1.101 "**Public Health and Safety Exception**" has the meaning set forth in Section 6.10.1.

1.102 **"Public Improvements"** means the following improvements: (i) new sidewalks and sidewalk amenities at a width and design to be determined by DPW and Planning

Department staff in accordance with the Better Streets Plan, Central SOMA Plan, and Planning Code, (ii) curbs on the portions of Brannan, Fifth, Sixth, and Morris Streets adjoining the Project Site as outlined in the drawings attached to the Approvals from the Planning Commission; (iii) off-site public open space improvements under the elevated portion of Interstate-80 between.

1.103 **"Relocation Date"** means the date on which all of the Vendors who wish to be relocated to the Temporary Relocation Facility, or to the Permanent Off-Site Facility, as applicable, are relocated by Developer in accordance with the Tri-Party Agreement.

1.104 "**Relocation Matters**" has the meaning set forth in Section 3.3.

1.105 "**Relocation Option During Litigation Pendency**" has the meaning set forth in Section 3.8.2(d).

1.106 "**Relocation Site Approval**" means land use approvals and Planning Code exceptions applicable to the Temporary Relocation Site at 2000 Marin set forth on Exhibit Q, and any land use approvals, entitlement, or permit, from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Relocation Site located at 2000 Marin by the Existing Subtenants and Pre-Development Subtenants during the construction of the Project.

1.107 "**SFFD**" means the San Francisco Fire Department.

1.108 "**SFFM**" means San Francisco Flower Mart LLC, a California limited liability company.

1.109 "**SFMTA**" means the San Francisco Municipal Transportation Agency.

1.110 "**SFPUC**" means the San Francisco Public Utilities Commission.

1.111 "**SFPUC Capacity Charges**" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

1.112 "**Stay Notice**" has the meaning set forth in Section 3.3.

1.113 "**Stay Option**" means Developer construction of a New Wholesale Flower Market at the Project Site.

1.114 "**Subdivision Code**" means the San Francisco Subdivision Code.

1.115 "**Subdivision Map Act**" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.116 "**Temporary Relocation Facility**" means the temporary flower market facility to be built by Developer (if at all) at no cost to the City or to the flower market Vendors, and meeting the requirements of Exhibit E.

1.117 **"Temporary Relocation Site"** means a Viable site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Relocation Facility. In the event the Stay Option is exercised, the Temporary Relocation Site will be at 2000 Marin so long as no other mutually agreeable Viable temporary site is selected by the Parties and Developer has entered into an Interim Lease for 2000 Marin.

1.118 "**Tenant Association**" means the San Francisco Flower Market Tenants' Association.

1.119 "**Tenant Option Period**" has the meaning set forth in Section 3.3.

1.120 "**Term**" has the meaning set forth in Section 2.2.

1.121 "**Third-Party Challenge**" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the

validity or performance of any provision of this Agreement, the Project, the Approvals, Later Approvals, the CPE or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

1.122 "**Transfer," "Transferee" and "Transferred Property**" have the meanings set forth in Section 13.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

1.123 "**Transfer Agreement**" means that certain Agreement for Transfer of Real Estate attached as Exhibit S for the transfer of property outside the Project Site from Developer to the City to be used by the City for the development of affordable housing or to fund the development of affordable housing, as may be determined by City.

1.124 "**Transfer Parcel**" means vacant, unimproved land within the Central or Western SoMa Plan Area, not less than 14,000 square feet, identified by Developer and acceptable to MOHCD, for conveyance to the City in accordance with the Transfer Agreement;

1.125 "**Transportation Program**" means the transportation program set forth in Exhibit J.

1.126 "**Tri-Party Agreement**" means that certain Tri-Party Agreement among Developer, the Tenant Association, and the SFFM, dated as of June 26, 2015, and amended and restated on _____, 2019.

1.127 "**Ultimately Granted**" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any

of the Approvals, this Agreement or the CPE shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the CPE, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the CPE, and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

~~1.127~~1.128 "**Vendors**" means the Existing Subtenants and Pre-Development Subtenants that wish to be relocated to the Temporary Relocation Facility or the Permanent Off-Site Facility, as the context requires, in accordance with the Tri-Party Agreement and either the Pre-Development Master Lease or Permanent Off-Site Master Lease, as applicable.

~~1.128~~1.129 "**Vested Elements**" has the meaning set forth in Section 6.1.

~~1.129~~1.130 "**Viable**" has the meaning set forth in Section 3.7 with respect to Permanent Off-Site Facility. For a Temporary Relocation Site, "Viable" means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary retail uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can accommodate the design and specifications set forth in Exhibit E for the Temporary Relocation Facility; (iv) the site is owned by Developer or under an Interim Lease with Developer; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit E for the Temporary Relocation Facility, or on which such a

building could be constructed by Developer.

~~1.130~~1.131 "**Workforce Agreement**" means the Workforce Agreement attached hereto as Exhibit O.

~~1.131~~1.132 "**Zappettini Parcel**" means Assessor's Lots 047 and 048 on Block 3778.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative.

2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter (the "**Initial Term**"), unless extended or earlier terminated as provided herein, provided however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to terminate this Agreement with respect to the first Phase upon completion of the first Phase, including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the first Phase during the Initial Term and thereafter continues to diligently prosecute the first Phase to completion, and is not in Default (or has cured a Default pursuant to Section 10.3) under this Agreement between the date of exercise and the date the Initial Term expires, then Developer shall have the right to extend the term of this Agreement for an additional five (5) years (the "**Extended Term**") by delivering to the City, at any time during the last year of the Initial Term, a notice of extension. The 5-year extension shall be automatic upon Developer's delivery of the extension notice unless Developer is in Default (not including a Default that was cured pursuant to Section 10.3) at the time

Developer sends the notice or before the start of the Extended Term, in which case the City may reject the notice by written notice of rejection to Developer. The term of this Agreement (the "**Term**") shall mean the Initial Term plus, if applicable, the Extended Term. The performance period or the term for any Approval or Later Approval shall be for the longer of the Term or the performance period or term otherwise applicable to such Approval or Later Approval. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2.3 Phasing. Developer anticipates completing Phase 1(a) first, before Phase 1(b) or Phase 1(c); however, Developer may alter the anticipated phasing, including completion of multiple Phases simultaneously, so long as the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) described in Exhibit H are completed prior to Developer's receipt of the first certificate of occupancy for any Phase or portion thereof.

3. TEMPORARY RELOCATION SITE AND PERMANENT OFF-SITE FACILITY

3.1 Temporary Relocation Site. Before Developer may begin demolition on the portion of the Project Site other than the Zappettini Parcel, Developer shall (a) obtain the exclusive right to occupy (based on an Interim Lease or ownership interest) improved or unimproved real property for use of the Temporary Relocation Site, consistent with the requirements of the Tri-Party Agreement and this Agreement, (b) complete the Temporary Relocation Facility in accordance with the specifications set forth in Exhibit E, and (c) move the Vendors that occupy the Existing Flower Market as of the Relocation Date and wish to be relocated to the Temporary Relocation Facility at no cost to the Vendors in accordance with the

Tri-Party Agreement. Developer shall ensure that the Vendors have the continuing right to occupy the Temporary Relocation Facility under the Interim Lease, on the same terms of their then-existing subleases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than six (6) years, including any extension options, from the Interim Lease commencement date; provided the City may agree to a shorter term if the City determines that less time is needed for the completion of construction of the New Wholesale Flower Market or the Permanent Off-Site Facility, whichever is the case. Notwithstanding the foregoing, Developer may skip the Temporary Relocation Facility and move the Vendors straight to the Alternative Permanent Site if the Permanent Off-Site Option is selected when the Permanent Off-Site Facility at the Alternative Permanent Site is complete.

3.2 Permanent Off-Site Option or Stay Option. As set forth in this Article 3, the City shall elect either the Permanent Off-Site Option or the Stay Option. Following the City's election, Developer shall either (i) complete the New Wholesale Flower Market at the Project Site under the Stay Option, or (ii) complete the Permanent Off-Site Facility at the Alternative Permanent Site under the Permanent Off-Site Option.

3.3 Tenant Option Period. Tenant Association, acting through its counsel, will send to the City, with a copy to Developer, a notice requesting that the City proceed with the Stay Option in the form attached as Exhibit G-2 (the "**Stay Notice**") or the Permanent Off-Site Option in the form attached as Exhibit G-3 (the "**Permanent Off-Site Notice**") on or before thirty (30) days after the Effective Date ("**Tenant Option Period**"). The Stay Notice or the Permanent Off-Site Notice shall be sent by the Tenant Association's counsel, confirming that the Tenant Association has affirmatively voted and approved, at a duly noticed and held election in accordance with the Tenant Association's bylaws to choose either the Stay Option or the

Permanent Off-Site Option, and shall include, substantially in the form and content in the "Tenant Association Release and Indemnity" included in Exhibits G-2 and G-3, (1) a release of any claims by the Tenant Association against the City regarding this Agreement, the Tri-Party Agreement and any other related documents, the Temporary Relocation Site, New Wholesale Flower Market, the Alternative Permanent Site, and the relocation of Vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (2) a release of any claims by the Tenant Association against Developer for the Relocation Matters, but excluding all of Developer's prospective obligations under this Agreement and any other agreement between the Tenant Association and Developer; and (3) an indemnity by the Tenant Association, in favor of the City and Developer, for any claims made by any flower market vendor challenging any of the Relocation Matters.

3.4 Stay Option Exercise. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Tenant Option Period, the City will send the Exercise Notice in the form attached as Exhibit G-1 (the "**Exercise Notice**") to Developer within five business (5) days after receipt of the Stay Notice, electing the Stay Option if, on before the date that is sixty (60) days after the expiration of the Tenant Option Period ("**Alternative Option Period**"), which may be extended at Developer's request by an additional thirty (30) days or longer ("**Extended Alternative Option Period**"), Developer delivers to the City, with a copy to the Tenant Association, an executed Interim Lease for the Temporary Relocation Facility or proof of Temporary Relocation Site ownership. If the Stay Option is exercised the Permanent Off-Site Option shall terminate and be no further force or effect. Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.

3.5 Permanent Off-Site Option Exercise. If the Tenant Association elects the Permanent Off-Site Option and sends the Permanent Off-Site Notice to the City before the end of the Tenant Option Period, the City shall exercise the Permanent Off-Site Option if, on or before the expiration of the Alternative Option Period or the Extended Alternative Option Period, as applicable, Developer delivers to the City, with a copy to the Tenant Association, preliminary conceptual plans for a Viable location in San Francisco for the Permanent Off-Site Facility, and the City agrees that the proposed Alternative Permanent Site is Viable. If the Developer does not deliver the above-mentioned conceptual plans in a timely manner or if the City does not agree that the Alternative Permanent Site is Viable, the Extended Alternative Option Period is extended until such time when the plans are delivered to the City or the City agrees that the Alternative Permanent Site is Viable, as applicable. The City shall exercise the Permanent Off-Site Option by delivery of the Exercise Notice to Developer in the form attached as Exhibit G-1 within five (5) business days after receipt of the above-mentioned information from Developer.

3.6 Tenant Failure to Exercise; Final City Election. If the City does not receive the Permanent Off-Site Notice or the Stay Notice before the end of the Tenant Option Period, the City has the right, in its sole discretion, to elect either the Permanent Off-Site Option or the Stay Option based upon all of the information available to it. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within fifteen (15) days after the Alternative Option Period or the Extended Alternative Option Period, as applicable. If the City fails to send the Exercise Notice by the end of such fifteen (15) day period, then Developer shall have the right to choose between the Stay Option and the Permanent Off-Site Option.

3.7 Permanent Off-Site Facility Construction. The Permanent Off-Site Option is designed to provide for the renovation of existing building(s) and/or construction of new building(s) in order to create a permanent wholesale flower market at an Alternative Permanent Site by Developer (the "**Permanent Off-Site Facility**"). The Permanent Off-Site Facility constructed by Developer shall be on a Viable Alternative Permanent Site. "**Viable**" for purposes of an Alternative Permanent Site means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is not a publicly owned site; (iii) the site is mutually agreeable to Developer and Tenant Association; (iv) the site is either owned by Developer or leased by Developer for a term of at least 34.5 years or 35 years, as approved by the City; and (v) any lienholder with an interest in the site superior to the Permanent Off-Site Master Lease has provided reasonable non-disturbance protections to the Master Tenant and to any subtenants under the Permanent Off-Site Master Lease.

3.8 Completion of Design and Construction Documents. Following exercise of the Permanent Off-Site Option, Developer shall complete design and construction documents for the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease, submit applications for the Permanent Off-Site Approvals to the City, and shall construct the Permanent Off-Site Facility in accordance with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease.

3.8.1 If the Permanent Off-Site Option is exercised and any of the following circumstances occur: (i) the Permanent Off-Site Entitlement Approvals are not initially granted within the approval deadlines for environmental determinations specified by Section 1(a) of Executive Directive No. 17-02 issued by Mayor Edwin M. Lee starting from the date of receipt of Developer's complete response to the first Notice of Planning

Department Requirements issued by the Planning Department, subject to a 60-day cure period for the City (such period to commence upon written notice from Developer to the City and SFFM) to initially grant such Permanent Off-Site Entitlement Approvals and an extension period of up to one hundred twenty (120) days in the event that an administrative appeal is filed challenging the Permanent Off-Site Entitlement Approvals, and provided that in no case shall the approval time period be less than nine (9) months; (ii) the Permanent Off-Site Building Approvals are not finally granted within ~~nine (9~~six (6) months starting from later to occur of the date the Permanent Off-Site Entitlement Approvals are initially granted or the date of acceptance by the City of a complete application for Developer's first site permit or first building permit for the Alternative Permanent Site, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the City to finally grant such Permanent Off-Site Building Approvals and subject to an extension for the period of any appeal ~~in the event~~of the Permanent Off-Site Building Approvals; provided that the City agrees that it will process the Permanent Off-Site Building Approvals in parallel with the pendency of the Permanent Off-Site Entitlement Approvals ~~are appealed, up to 120 days~~in accordance with its standard practices; (iii) an administrative appeal or judicial challenge is filed by Tenant Association, SFFM, or any vendor at the Existing Flower Market challenging the Permanent Off-Site Approvals, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for such parties to withdraw the administrative appeal(s) or expunge judicial challenge(s); or (iv) a judicial challenge is filed by any party challenging the Alternative Permanent Site Approvals for the Permanent Off-Site Facility that results in the issuance of an injunction

prohibiting the issuance of building permits, commencement of construction, and/or occupancy of the Permanent Off-Site Facility pursuant to the Permanent Off-Site Approvals, subject to a 120-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the injunction to be lifted, then all of the following shall apply:

(a) Developer may terminate the Pre-Development Lease by delivering six (6) months prior written notice to SFFM, with a copy to the City, and notwithstanding Section 3.1 requirements regarding commencement of demolition on the Project Site to the contrary, upon the Pre-Development Lease termination Developer may begin demolition of the Project Site and construction of the Project; and

(b) If Developer terminates the Pre-Development Lease, then upon delivery of Developer's termination notice pursuant to Section 3.8.1(a), Developer shall provide SFFM a right to relocate to the Permanent Off-Site Facility pursuant to the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent Off-Site Facility in an "as is" condition ("**As Is Relocation Option**"), which ~~(unless SFFM elects to require Developer to construct the Permanent Off-Site Facility as described in Section 3.8.1(c) below)~~ means the condition existing at the Alternative Permanent Site as of SFFM's exercise of the As Is Relocation Option; and

(c) Within 60 days of the receipt of Developer's termination notice, SFFM shall either: (i) accept the As Is Relocation Option, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent

Off-Site Facility in an "as is" condition per Section 3.8.1(b), and Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000) for any tenant improvements SFFM elects to complete to the Permanent Off-Site Facility; or (ii) reject, or fail to timely exercise, the As Is Relocation Option, in which case upon the effective date for the termination of the Pre-Development Lease, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco~~.~~; and

~~(c)~~(d) In the cases described in Section 3.8.1 (i), (ii), or (iv) above ~~and if SFFM accepts the As Is Relocation Option pursuant to this Section 3.8.1(c),~~, then in addition to its choice of remedies described in the foregoing sentence and despite termination of the Pre-Development Lease, in lieu of the initial payment of $15,000,000, SFFM may choose to require Developer to diligently pursue the Permanent Off-Site Approvals and complete construction of the Permanent Off-Site Facility consistent with Exhibit F-1 and the Permanent Off-Site Master Lease for a period of

twenty-four (24) months after SFFM's election, and if completion (i) occurs by the end of such period then upon completion Developer shall relocate all Vendors who wish to be relocated to the Permanent Off-Site Facility pursuant to the Permanent Off-Site Master Lease, or (ii) does not occur by the end of such period then Developer shall pay $15,000,000 to SFFM upon expiration of such period.

3.8.2 In the event that a filing and pendency of a judicial challenge on the Permanent Off-Site Approvals exists and was filed by a party other than Tenant Association, SFFM, or any vendor at the Existing Flower Market, and no injunction is issued preventing the issuance of the Permanent Off-Site Approvals, then during the pendency of such challenge Developer may not effect termination of the Pre-Development Lease prior to the conclusion of such challenge and may either wait for resolution of the challenge, or may proceed with the construction of the Permanent Off-Site Facility consistent with the Permanent Off-Site Approvals and Exhibit F-1 in which case all of the following shall apply:

(a) Unless prohibited by injunction, City Agencies shall not stop the processing or issuance of building permits or approvals due to such judicial challenge and, provided that Developer obtains any necessary Later Approvals, shall allow development of the Permanent Off-Site Facility to proceed consistent with the Permanent Off-Site Approvals; and

(b) Developer shall give SFFM a right to relocate to the Permanent Off-Site Facility after ~~the~~ Developer's completion of the Permanent Off-Site Facility in accordance with Exhibit F-1 and pursuant to the Permanent Off-Site Approvals ("**Relocation Option During Litigation Pendency**"); and

(c) Within 60 days of its receipt of ~~the~~ Developer's Relocation Option During Litigation Pendency notice, SFFM shall either: (i) accept the Relocation Option During Litigation Pendency, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for SFFM acceptance of any limitations or restrictions (whether occupancy or improvement related) which may be imposed by the verdict in the judicial challenge (subject to SFFM's right to pursue any approvals or other authorizations to eliminate any compliance issues established by such a verdict), in which case Developer shall complete construction of the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1, and upon the Relocation Date the Pre-Development Lease shall terminate; or (ii) reject or fail to timely exercise the Relocation Option During Litigation Pendency, in which case the Pre-Development Lease shall terminate no less than six (6) months after delivery of the Relocation Option During Litigation Pendency notice, Developer shall provide SFFM a payment of ~~Ten~~Fifteen Million Dollars ($~~10~~15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years, at

Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco.

3.8.3 In the event that the issuance of any element of the Permanent Off-Site Approvals is delayed as a result of (i) Developer's failure to provide requested additional information or materials from City Agencies or to respond to City Agencies in a prompt and expeditious manner, or (ii) the filing or pendency of an administrative appeal or judicial challenge to any of the Permanent Off-Site Approvals by Developer or its Affiliate, then the corresponding period for the affected Permanent Off-Site Approval shall be extended by the length of such delay.

3.9 City Decisions. Except where otherwise noted, all discretionary decisions relating to City actions under this Article 3 shall be made jointly by the Planning Director and the OEWD Director of Development. The Planning Director and the OEWD Director of Development will consult other City officials as they deem appropriate.

3.10 No City Liability. Following exercise of the Permanent Off-Site Option, OEWD and Planning staff shall use good faith efforts to assist Developer with the development of the Permanent Off-Site Facility at the Alternative Permanent Site. Following exercise of the Stay Option, OEWD and Planning staff shall use good faith efforts to monitor and enforce Developer's obligations to build the New Wholesale Flower Market at the Project Site. But nothing in this Agreement shall create any City liability to Developer, to the Tenant Association, to SFFM, or to any flower market vendor relating to the New Wholesale Flower Market, the Permanent Off-Site Facility, or to the Relocation Matters. All interested persons are given notice, and understand and agree, that completion of the New Wholesale Flower Market or the Permanent Off-Site Facility will likely involve many challenges, and that no particular outcome can be guaranteed. By

entering into this Agreement, the City is not guarantying the successful completion of the replacement market or any other result. The City would not be willing to enter into this Agreement without this provision. Without limiting Developer's indemnity obligations in this Agreement, if and to the extent that City is required to expend any funds or staff time defending this Agreement or any discretionary decisions made by the City related to this Article 3 or the Relocation Matters from a claim made by the Tenant Association or any flower market vendor, such funds and the costs of such staff time shall be included in City Costs.

3.11 Tri-Party Agreement; Declaration of Restrictions. Developer shall comply with its key obligations under the Tri-Party Agreement, including compliance with the rent schedule provided in Exhibit D and other key obligations summarized in Exhibit D. If the Permanent Off-Site Option is exercised, then prior to the earlier to occur of (i) issuance of the first certificate of occupancy for any portion of the Project (provided that SFFM has not rejected or failed to timely exercise either the As Is Relocation Option or the Relocation Option during Litigation Pendency pursuant to Section 3.8.1 or Section 3.8.2, in which case no Declaration of Restrictions shall be recorded against the Alternative Permanent Site), or (ii) commencement of the term of the Permanent Off-Site Master Lease, Developer shall record a Declaration of Restrictions (the "**Declaration of Restrictions**") against the Alternative Permanent Site consistent with the form of document attached in Exhibit D-1 and revised as appropriate with such terms and conditions relating to this Agreement, the Permanent Off-Site Master Lease, and the Alternative Permanent Site, as the City may reasonably require. The term of the Declaration of Restrictions shall end upon termination of the Permanent Off-Site Master Lease and any Deemed Consent Subleases (as defined in the Permanent Off-Site Master Lease), and upon such termination the Declaration of Restrictions shall no longer affect the Alternative Permanent Site.

The City requires recordation of the Declaration of Restrictions to assure that Developer's commitments to the rent subsidies pursuant to the Permanent Off-Site Master Lease and its provision of the public benefit of a continued viable wholesale flower market in San Francisco are enforced. Developer's breach of the obligations described in Exhibit D or in the Declaration of Restrictions, following the notice and cure periods set forth in Section 10.3, shall be a material breach of this Agreement. Developer will provide the City with any information it requests relating to the Declaration of Restrictions, the Alternative Permanent Site, and the Permanent Off-Site Facility in a timely manner, including without limitation information customarily requested by the City's Assessor pursuant to California Revenue & Taxation Code, Sections 71, 441, and 470 and the right to audit revenues and expenditures relating to the Alternative Permanent Site and the Permanent Off-Site Facility. The provisions of this Section 3.11 shall survive the expiration of this Agreement.

4. GENERAL RIGHTS AND OBLIGATIONS

4.1 Project and Project Variant's Compliance with Certain Design Requirements. Concurrently with the approval of this Agreement, certain Planning Code Text Amendments applicable to the Project were approved by the Board of Supervisors, as listed in Exhibit R.

4.2 Development of the Project. Developer shall have the vested right to develop the Project and the Temporary Relocation Facility in accordance with and subject to the provisions of this Agreement, the Approvals, Later Approvals, and Relocation Site Approvals with respect to 2000 Marin, and the City shall consider and process all Later Approvals for development of the Project and the Temporary Relocation Facility at the Temporary Relocation Site, in accordance with and subject to the provisions of this Agreement. The Parties

acknowledge (i) that immediately before the approval of this Agreement, the City approved and granted the Approvals for the Project as listed in Exhibit K, and (ii) that Developer may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals, as needed.

4.3 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement.

4.4 Community Facility Districts. The City intends to form a CFD under the CFD Act to finance or seek reimbursement of certain costs as set forth in the SOMA Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the CFDs or other charges set forth in the Central SOMA Plan, or the issuance of additional bonds or other financing secured by CFD special taxes or the application of bond proceeds consistent with the SOMA Plan. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Central SOMA Plan fees or the CFD special taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in any sale agreement or lease for all or part of the Project Site.

4.5 Transfer Parcel. Before the issuance of the first construction document for the Project, the City, acting through MOHCD, and Developer shall enter into the Transfer Agreement, substantially in the form attached as Exhibit S, for the Transfer Parcel proposed by Developer and approved by MOHCD. Developer shall convey the Transfer Parcel to the City in

accordance with the Transfer Agreement on or before issuance of the first certificate of occupancy for any portion of the Project's first building. The City shall use the Transfer Parcel to develop affordable housing; provided if the City decides after acceptance that it cannot develop affordable housing on the Transfer Parcel, the City may sell the Transfer Parcel and use the net sales proceeds for affordable housing within the boundaries of Central SoMa, Eastern SoMa or Western SoMa Area Plans.

5. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

5.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 5 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is an essential element to this Agreement and is tied to a specific phase of the Project, as described in the Phasing Plan or elsewhere in this Agreement (with each Phase, an "**Associated Community Benefit**"). Time is of the essence with respect to the completion of the Community Benefits.

5.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefit Programs**"):

(a) the construction and development of the New Wholesale Flower Market on the Project Site or alternatively, if the Permanent Off-Site Option is exercised, the construction and development of the Permanent Off-Site Facility at the Alternative Permanent Site in accordance with Article 3;

(b) the rent subsidies per the Tri-Party Agreement, in accordance with the rent schedule included in Exhibit D and the Declaration of Restrictions attached as Exhibit D-1;

(c) the relocation of the Existing Tenants and Pre-Development Subtenants to the Temporary Relocation Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or to the Alternative Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party Agreement, including the requirement that all Existing Tenants and Pre-Development Subtenants shall be moved together at one time (the collective obligations in subparagraphs (a) through (c) shall be referred to as the "**Flower Market Obligations**");

(d) the Workforce Program, as described in Exhibit O;

(e) the Project Open Space and Public Improvements, as described in Exhibit I;

(f) the Transportation Demand Management Program attached as Exhibit J;

(g) conveyance of the Transfer Parcel to the City, in accordance with the Transfer Agreement, at no cost to City;

(h) under the Project Variant, Developer shall construct a subsidized child care center in Phase 1(a), consisting of approximately 23,000 square feet at the Blocks Building, for lease to a qualified non-profit child care operator for ten (10) years at a cost not exceeding landlord's actual costs for operating expenses;

(i) the payment of $5 million to Mercy Housing California, to pay for costs related to the Sunnydale Hub project, on or before the issuance of the first construction document for the Project; and

(j) the payment of $200,000 within sixty (60) days following the Effective Date, and each anniversary thereafter annually for a period of ten (10) years (i.e. a total of $2,000,000), to a fund designated by the City's Controller in consultation with the City's District 6 Supervisor to support pressure washing and/or steam cleaning of sidewalks and street cleaning efforts in SoMa, as designated by the District 6 Supervisor in consultation with the City's Department of Public Works.

5.1.2 Conditions to Performance of Community Benefits.

Developer's obligation to perform each Associated Community Benefit is expressly conditioned upon each and all of the following conditions precedent:

(a) All Approvals and Later Approvals for the applicable Phase to which the Associated Community Benefit is tied shall have been ~~Finally~~Ultimately Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and Relocation Site Approvals with respect to 2000 Marin, if applicable) have not been obtained or ~~Finally~~Ultimately Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit with a

Phase, the City may withhold a certificate of occupancy for the Building in that Phase until the required Associated Community Benefit is completed or Developer has provided the City with adequate security for completion of such Associated Community Benefit (*e.g.*, a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney); and

(b) Developer shall have Commenced Construction of the Building in the applicable Phase to which the Associated Community Benefit applies.

5.2 No Additional CEQA Review Required; Reliance on CPE and Addendum for Later Approvals. The Parties acknowledge that the CPE and Addendum prepared for the Project and 2000 Marin as the Temporary Relocation Site, respectively, complies with CEQA. The Parties further acknowledge that (a) the CPE and Addendum contain a thorough environmental analysis of the Project, including the Temporary Relocation Site (with respect to 2000 Marin), and demonstrate that the Project's impacts were previously analyzed in the Central SOMA FEIR and the Addendum, as the case may be; (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the CPE and Addendum, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with the Temporary Relocation Site or a change in the location of the Temporary Relocation Site, the

Permanent Site, affordable housing dedication site, or any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

5.3.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all mitigation measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the CPE and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

5.3 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability

or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

5.4 City Cost Recovery.

5.4.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 6.7.

5.4.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

5.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 5.5.4 from the City.

5.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a

description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 5.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

5.4.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

5.5 Prevailing Wages. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms “public work” and “paid for in whole or part out of public funds” are defined in and subject to exclusions and further conditions under California Labor Code sections 1720 - 1720.6. In connection with the

Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all persons performing labor in the construction of Public Improvements under this Agreement will be: (1) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), and (2) provided the same hours, working conditions, and benefits as provided for similar work performed in San Francisco County in Administrative Code section 6.22(f). Developer further agrees to employ Apprentices on the Public Improvement work in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing the Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. City's Office of Labor Standards Enforcement ("**OLSE**") enforces labor laws, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

5.6 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury,

death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

6. VESTING AND CITY OBLIGATIONS

6.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Accordingly, the City in granting the Approvals and vesting them through this Agreement is limiting its future discretion with respect to Later Approvals and Relocation Site Approvals to the extent they include elements that were approved as part earlier Approvals. The criteria for City review and approval of Later Approvals is set forth in Section 6.3. Consequently, the City shall not use its discretionary authority in considering and approving an application for Later Approvals or Relocation Site Approvals with respect to 2000 Marin to change the policy decisions reflected by the Approvals or otherwise to prevent or to delay development of the Project or the Project Variant as set forth in the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access and parking (including parking ratios), and the Prop. M allocation made for the Project on the Effective Date (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals and Relocation Site Approvals with respect to 2000 Marin, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval

and Relocation Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

6.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 6.7, and (iii) this Agreement (collectively, "**Applicable Laws**").

6.3 Criteria for Later Approvals. Developer shall be responsible for obtaining applicable Later Approvals before the start of construction that requires such approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval based upon an item or element that is consistent the Approvals, and shall consider all such applications in accordance with City's customary practice, normal discretion and Applicable Laws, subject to the requirements of this Agreement. The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Approvals and the Planning Code, and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" or the Temporary Relocation Site under this Agreement.

6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from Developer of a completed application (with any required supporting documentation) for one of more Later Approvals, Relocation Site Approvals, or Permanent Off-Site Approvals, the City shall use reasonable efforts to promptly commence and complete all steps necessary to act on such applications in a timely way and in accordance with applicable Laws.

6.5 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Mechanical Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, and the Public Works Code and Subdivision Code and other uniform construction codes applicable on a City-Wide basis. This shall not be construed to prohibit exceptions, equivalencies, or other administrative relief available under such Codes.

6.6 Denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. If the City denies any application for a Later Approval that implements a Building that is part of the Project or a Relocation Site Approval or Permanent Off-Site Approval for the Temporary Relocation Site or Alternative Permanent Site, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with this Agreement, earlier Approvals, and Applicable Laws, and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, earlier Approvals and Applicable Laws, and does not include new or additional

information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

6.7 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**New City Laws**") shall apply to the Project, the Project Site, and the Temporary Relocation Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

6.7.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project or the Temporary Relocation Site at 2000 Marin, or any part thereof, or otherwise require any reduction in the square footage, number, or size of the proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from those permitted under the Approvals;

(b) limit or reduce the height, bulk, or mass of the Project, or any part thereof, or otherwise require any reduction in the height, bulk, or mass of individual Buildings or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, or the amount or location of parking or loading from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the consideration of the Phase 1(b) Office Allocation as specified in Section 6.8(b), or demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

(i) impose any regulation or other requirement that controls commercial rents or purchase prices charged within the Project or on the Project Site, except as set forth in this Agreement and the Tri-Party Agreement;

(j) materially limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 6.9.2); or

(l) Reduce the amount of allowable parking or loading for the Project or the Temporary Relocation Site at 2000 Marin; or

(m) Negatively alter the Phase 1(b) Office Allocation priority in Section 6.8(b).

6.7.2 Developer may, at its sole discretion, elect to have a New City Law that conflicts with this Agreement be applied to the Project or the Project Site by

giving the City written notice of its election to have a New City Law applied, in which case such New City Law shall be deemed to be an Existing Standard;

6.7.3 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge parcels within the Project Site as is required or may be desirable in order to developer a particular phase of the Project the Project or to lease, mortgage or sell all or some portion of it. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals or Later Approvals.

6.8 Proposition M Office Allocation. The Project includes up to 2,061,380 gross square feet ("**GSF**") of office development proposed to be constructed in three phases: (i) Phase 1(a) with up to 1,384,578 GSF of office, (ii) Phase 1(b) with up to 351,895 GSF of office; and (iii) Phase 1(c) with up to 324,907 GSF of office. Before the Effective Date, by Motion No. 20485 (the "**Office Allocation Motion**"), the Planning Commission adopted findings pursuant to Planning Code Section 321(b)(1) that up to 2,061,380 GSF of office development at the Project Site contemplated by this Agreement and the Central SOMA Plan and Design Guidelines promotes the public welfare, convenience and necessity, and in doing so it considered the criteria

in Planning Code Section 321(b)(3)(A)-(G). The findings contained in the Office Allocation Motion are incorporated into this Agreement. Because the office development contemplated by the Project has been found to promote the public welfare, convenience and necessity, the determination required under Section 321(b), where applicable, will be deemed to have been made for the entire Project (i.e., up to 2,061,380 GSF of office development undertaken consistent with the Project).

(a) In the Office Allocation Motion, the Planning Commission also granted up to 1,384,578 GSF of Prop M office allocation for Phase 1(a).

(b) Additional Prop M allocations for Phase 1(b) and Phase 1(c) are necessary for completion of the Project and to support the viability of the Associated Public Benefits for each respective Phase. An application for the Phase 1(b) and 1(c) Prop M allocations is on file with the Planning Department under Case No. 2017-000663OFA. If Developer is not then in default under this Agreement, the Planning Commission shall consider the Phase 1(b) office allocation at its first regularly scheduled hearing on or after October 17, 2021, unless otherwise requested by Developer. Developer shall notify the Planning Director not less than 60 days in advance of the hearing date to ensure that the matter is added to the calendar, and Developer has the right to make changes to its existing application at any time before such notification date. Provided the design of the Project remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to additional office allocation of no less than 351,895 gsf under Sections 320-325 over office development proposed elsewhere in the City, subject to the existing priorities previously given to (a) the Mission Bay South Project Area; (b) the Transbay Transit Tower proposed for development on Lot 001 of Assessor's Block No. 3720; and (c) the Treasure Island development project. Notwithstanding the above, no office development project

can be approved that would cause the then applicable annual limitation contained in Planning Code Section 321 to be exceeded, and the Planning Commission shall consider the design of the Project to confirm that it remains consistent with the Planning Commission's findings under Section 321(b)(3)(A)-(G) in the Office Allocation Motion. The requirements for Planning Commission approval described above will apply to the Project except to the extent such application would be prohibited by applicable law.

(c) Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which either the Stay Option or the Permanent Off-Site Option is exercised by the City to obtain a site permit for office development for the applicable phase of the Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

6.9 Fees and Exactions.

6.9.1 Generally. The Project and the Temporary Relocation Site at 2000 Marin shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 6.7, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or the Temporary Relocation Site at 2000 Marin, or impose new conditions or requirements for the right to develop the Project or the Temporary Relocation Site at 2000 Marin (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 6.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in

accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

6.9.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project (or the Project Variant) or components thereof except for (i) those Impact Fees and Exactions specifically set forth on Exhibit P, and (ii) the SFPUC Capacity Charges, as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the Parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined; provided (i) in determining the amount of the Impact Fees and Exactions during the Initial Term only (as extended by Litigation Extension, if any), the rates will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid, and (ii) the initial Jobs Housing Linkage Fee shall not be calculated from the Effective Date, but instead shall be set based on legislation per Ordinance No. 251-19 (File No. 190548) to update the Jobs Housing Linkage Fee if adopted before the date of payment (or, once adopted, the updated Fee amount will apply to payments made after the date of adoption), and thereafter shall adjust under Planning Code Section 409 as set forth in clause (i) above. During the Extension Term (if any), Developer shall be subject to any increase or decrease in the fee amount payable and any changes to the methodology of calculation (e.g., use of a different index to calculate annual increases), but will not be

subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date. No Impact Fees or Exactions shall apply to the use of the Temporary Relocation Site at 2000 Marin for pre-existing uses or for new spaces constructed for flower market tenants.

(a) Jobs-Housing Linkage Fee and Affordable Housing Site Dedication. , Developer may satisfy all or a portion of its obligation under Planning Code Section 413 by utilizing the Transfer Parcel as a land dedication alternative (the "**JHL Fee Credit**") in accordance with Planning Code Sections 249.78(e)(2) and 413.7.

(b) Central SoMa Legacy Business and PDR Support Fund. In the event the Permanent Off-Site Option is exercised pursuant to Article 3, Developer shall deposit Twenty Million Dollars ($20,000,000) into a special fund or other account designated by the City (the "Central SoMa Legacy Business and PDR Support Fund") prior to issuance of the first construction document for the Project. Central SoMa Legacy Business and PDR Support Fund shall be used by the City to provide annual business grants to the Master Tenant under the Permanent Off-Site Master Lease each year beginning in the fourth year of the lease term, up to the earlier to occur of (i) thirty-four (34) years after commencement of the Permanent Off-Site Master Lease, or (ii) exhaustion of funds in the Central SoMa Legacy Business and PDR Support Fund. The amount of such annual grant shall be determined by the City's Controller in consultation with the OEWD Director of Development, and shall be based upon the amount which, in the Controller's best judgment, will assure a continuous revenue stream during the lease term and will also provide necessary support to the Master Tenant.

Notwithstanding the foregoing, if the City has not waived Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000) in Impact Fees and Exactions prior to issuance of the first construction document for the Project, then Developer shall not have any obligation to deposit funds into the Flower Market Legacy Business Fund. At the end 34 years, any unexpended funds shall be retained by the City to be used for job training, job retention, and other economic development purposes or shall be deposited into the fund from which it was diverted or the relevant successor fund.

(c) Eastern Neighborhoods Infrastructure Fee and Gateway Marker. Notwithstanding the provisions of Planning Code Section 423, Developer shall fund the design and complete the construction of an arch, monument, pillar or other physical marker, in a public location approved by the Planning Director, identifying the San Francisco Filipino Cultural Heritage District ("**Gateway Marker**"). The construction and permitting of the Gateway Marker shall be subject to the Planning Director's approval as to design and location, at his or her sole discretion following any required environmental review. Upon approval of the design, if any, the City shall enter into an in-kind agreement, using the City's standard form, to provide credit against Developer's Eastern Neighborhoods Infrastructure Impact Fees under Planning Code Section 423 in an amount equal to Developer's third party design and construction costs but not to exceed $300,000. In the event the Gateway Marker is not fully approved and permitted by the City three years after the Effective Date, the City may instead allocate $300,000 of the Developer's Eastern Neighborhoods Infrastructure Impact Fees paid, or to be paid, to the Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District, administered by the Mayor's Office of Housing and Community Development

under Administrative Code Section 10.100-52.

6.9.3 Processing Fees. Developer shall pay all Processing Fees in effect, on a City-wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

6.10 Changes in Federal or State Laws.

6.10.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

6.10.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 6.8.4, as applicable.

6.10.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

6.10.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 6.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law**

Adverse to Developer"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 6.8 would materially and adversely affect or limit the Community Benefits (a "**Law Adverse to the City**"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 6.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Associated Community Benefits for each Building completed as set forth in Section 5.1.

6.11 No Action to Impede Approvals. Except and only as required under Section 6.8 the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions

or conditions result in the occurrence of one or more of the circumstances identified in Section 6.6.1.

6.12 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9; (v) the Effective Date of the Agreement; and (vi) the names of the Mortgagee that are subject to receiving notices under Section 11.3. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request. The City acknowledges that third parties with a property interest in the Project Site, such as mortgagees, acting in good faith, may rely upon such a certificate.

6.13 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 6. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Planning Code and the Central SOMA Plan.

6.14 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

7. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building commenced by Developer as set forth in Section 5.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and

subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when each Phase and all of the Associated Community Benefits tied to that Phase have also been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit N for the applicable property.

8.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals, and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals, and any Later Approvals, are implemented. Except for ordinary

administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department (in consultation with OEWD) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. Each City Agency responsible for reviewing any Later Approvals shall designate a single employee responsible for working with Developer and the Planning Department: (i) to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) to interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

8.2.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

8.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project is commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment

terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal. Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project (and therefore, there is more than one party that assumes obligations of "Developer" under this Agreement), then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project and only as to such portion, and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

8.2.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

8.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals.

8.4 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement and the Approvals in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

9.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 9.2.

9.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation (not including any proprietary or confidential information, to the extent any exists), Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

9.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and

all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

9.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the

Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

9.2.4 Default. The rights and powers of the City under this Section 9.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of a Default.

10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

10.1 Enforcement. The only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

10.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 10.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 10.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed

to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 10.3.

10.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations, provided City shall have the right to withhold Later Approvals for all or any part of the Project Site if Developer fails to fulfill the Flower Market Obligations as and when required under this Agreement. Subject to the foregoing, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site. For purposes of this Section 10, a Party shall include all of its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any

termination or other remedy against that Party may include the same remedy against all such Affiliates.

10.4 Remedies.

10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 10.4.3, 10.4.4, and 10.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

10.4.2 Termination. Subject to the limitation set forth in Section 10.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 10.3 and 13.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

10.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 10.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages

under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 10.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

10.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which Developer is in Default or Developer has failed to

pay amounts due to the City under this Agreement; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City (subject to the Flower Market Obligation provisions described below). The City shall have the right to withhold a final certificate of occupancy within a Phase until all of the Associated Community Benefits tied to that Phase, together with the Flower Market Obligations, have been completed or Developer has provided the City with adequate security for completion of such Community Benefit (*e.g.*, a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney). For a Phase to be deemed completed, Developer shall have also completed all of the public open spaces and improvements for that Phase as set forth in Exhibit H or in a Later Approval; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance. Notwithstanding anything to the contrary above, the City shall have the right to withhold all certificates of occupancy and other Later Approvals Project-wide (against all Developers) if the Flower Market Obligations have not been satisfied when required. If the Payment Option has not been exercised, the Parties intend that the Post-Development Subtenants will be moved back to the Project Site first, and agree that City can withhold certificates of occupancy and Later Approvals for space at the Project Site until all of the Post-Development Subtenants (not including those who elect to move

elsewhere) have moved back to the Project Site in accordance with the Flower Market Obligations.

10.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals,

librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

11. FINANCING; RIGHTS OF MORTGAGEES

11.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site.

11.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 11.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from

or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 5.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

11.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this

Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

11.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 11.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, provided that such period is tolled for any period during which the Mortgagee is prohibited from proceeding with foreclosure proceedings, e.g. due to a bankruptcy filing, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

11.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other

liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 5.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

11.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

11.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

12. AMENDMENT; TERMINATION; EXTENSION OF TERM

12.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided that following a Transfer, the

City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 8.2.2, 8.4.2, and 12.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

12.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to Commence Construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to

Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

12.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Phase that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Phase that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 12.3 shall survive the termination of this Agreement.

12.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and no change to the Project that is permitted under the Central SOMA Plan shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed

Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project (or the Project Variant) as described in the Exhibits in keeping with its customary practices and the Central SOMA Plan, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

12.5 Extension Due to Legal Action or Referendum; Excusable Delay.

12.5.1 Litigation and Referendum Extension. If any litigation is filed challenging the Central SOMA Plan, the Central SOMA Plan FEIR, this Agreement, or an Approval having the direct or indirect effect of delaying this Agreement, or any Approval (including but not limited to any CEQA determinations), Relocation Site Approval, or Permanent Off-Site Approval that is ~~issued~~initially granted prior to the Relocation Date, including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, this Agreement, Approval, Relocation Site Approval, or Permanent Off-Site Approval that is ~~issued~~initially granted prior to the Relocation Date is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals that are ~~issued~~initially granted prior to the Relocation Date shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals ~~issued~~initially granted prior to the

Relocation Date, the date of the initial grant of such Approval, Relocation Site Approval, or Permanent Off-Site Approval ~~issued~~initially granted prior to the Relocation Date) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

12.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such

delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

14.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Transferee (*i.e.*, the person or entity that is the Developer

for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

14.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review within thirty (30) days after receipt, with such review being limited to confirming the Assignment and Assumption Agreement satisfies the requirements of this Agreement. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 13.1 shall not require the transfer of land or any other real property interests to the CMA.

14.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 13.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under

this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 9 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

14.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party’s ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.

14.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

14.6 Rights of Developer. The provisions in this Section 13 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

15. DEVELOPER REPRESENTATIONS AND WARRANTIES

16.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this

Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

16.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

16.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

16.4 Notification of Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a

contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

16.5 Other Documents. To the current, actual knowledge of _____ and _____, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

16.6 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

17. MISCELLANEOUS PROVISIONS

17.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

17.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

17.3 Binding Covenants; Run With the Land. Pursuant to Section 65864 et seq. of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 13, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their

respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 13, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Sections 1468-1470.

17.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

17.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

17.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

17.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

17.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

17.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

17.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

17.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other or additional person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, Flower Mart Project

To Developer:

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

with a copy to:

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

Attn: Daniel Frattin or Tuija Catalano

17.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

17.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

17.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

17.15 Tropical Hardwood and Virgin Redwood. The City 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.

17.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

17.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, or its successors and assigns, in the event of any Default by City, or for any amount, which may become due to Developer, or its successors and assigns, under this Agreement.

17.18 Non-Liability of Developer Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of Developer or affiliate of Developer shall be personally liable to City, or its successors and assigns, in the event of any Default by Developer, or for any amount, which may become due to City, or its successors and assigns, under this Agreement.

17.19 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved as to form:

DENNIS J. HERRERA, City Attorney

By:

Elizabeth A. Dietrich
Deputy City Attorney

Approved on _____, 2019
Board of Supervisors Ordinance No. _____

APPROVED AND AGREED:

By: _____
Naomi Kelly, City Administrator

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited liability company

By: Kilroy Realty, L.P,
a Delaware limited partnership,
its Sole Member

By: Kilroy Realty Corporation,
a Maryland corporation,
its General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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 San Francisco)

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

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

~~WITNESS my hand and official seal.~~

~~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.~~

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

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

WITNESS my hand and official seal.

Signature _____

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State of California)
County of San Francisco)

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State of California)
County of San Francisco)

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WITNESS my hand and official seal.

Signature _____

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT D

Rent Schedule and Key Tri-Party Agreement Commitments

Rent Schedule:

Lease Years 1-4. Annual Base Rent of $250,000/year.

Lease Years 5–Last; Increases in Base Rent. On the first day of Lease Year 5, the Base Rent shall be adjusted to the amount that Base Rent would have been (calculated as if the same been adjusted on the first day of Lease Years 2, 3, 4 and 5 pursuant to the annual CPI Adjustment procedure set forth in this Section 3.2 hereinbelow, inclusive of the 1% - 4% collar mechanism), had the Base Rent for Lease Year 1 been the sum of (x) a Monthly Rental Rate per Rentable Square Foot of $1.35, and (y) the actual rentable square footage of the Premises as determined pursuant to Section 1.2 of this Lease, above. On the first day of Lease Year 6 and the commencement date of each subsequent Lease Year thereafter occurring during the Lease Term (the "**CPI Adjustment Date**"), the Base Rent shall be adjusted (a "**CPI Adjustment**") to equal the product of (i) the Base Rent, as previously adjusted and in effect as of the applicable CPI Adjustment Date, and (ii) a fraction, the numerator of which is the Adjustment Month Index, as that term is defined below, occurring prior to such CPI Adjustment Date, and the denominator of which is either (x) for the first adjustment during the Lease Term, the Base Month Index, and (y) for all subsequent adjustments, the Adjustment Month Index used as the numerator for the prior year's adjustment; provided, however, that in no event shall the applicable CPI Adjustment result in the adjusted Base Rent being less than one percent (1%) higher or more than four (4%) higher than the Base Rent then in effect, as previously adjusted. For purposes of this Section 3.2, (a) "**Base Month Index**" shall be the "Index," as that term is defined below, for the month which is three (3) months prior to the month in which the first Lease Commencement Date occurs; (b) "**Adjustment Month Index**" shall be the Index for the same month as the Base Month Index in each succeeding calendar year; and (c) "**Index**" means the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area (base year 1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics. If the base of the Index changes from the 1982-84 base (100), the Index shall, thereafter, be adjusted to the 1982-84 base 100 before the computation indicated above is made. If the Index cannot be converted to the 1982-84 base or if the Index is otherwise revised, the adjustment under this Section 3.2 shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics. If the Index is at any time no longer published, a comparable index generally accepted and employed by the real estate profession, as determined by Landlord in Landlord's reasonable discretion, shall be used.

Tri-Party Agreement Context:
The following provides a summary of the key commitments in the Tri-Party Agreement. This summary is not intended and is not to be construed as altering the terms in the Tri-Party Agreement in any manner whatsoever. To the extent a conflict exists between this Summary and the Tri-Party Agreement, the Tri-Party Agreement shall prevail.

Parties: 1) Developer (i.e. KR Flower Mart, LLC)
2) Tenant Association (i.e. San Francisco Flower Market Tenants' Association)
3) San Francisco Flower Mart LLC

Key Commitments:

- Developer shall construct a new wholesale flower market and relocate the occupants thereto at Developer's sole cost, and provide interior improvements at Developer's sole cost if the Permanent Off-Site Option is exercised or provide an improvement allowance for such interior improvements if the Stay Option is exercised, with Developer further funding certain project management costs to be incurred by San Francisco Flower Mart LLC in connection with the design and construction of such interior improvements.
- Developer to reimburse San Francisco Flower Mart LLC for certain legal fee expenses incurred by San Francisco Flower Mart LLC with regard to the negotiation of the Tri-Party Agreement and master leases.
- Developer shall provide to subtenants, via a rent credit to San Francisco Flower Mart LLC (which in turn shall be provided as a credit to subtenants), a gross rent subsidy of $0.339 per rentable square foot per month throughout the first 15 years of the term of the Post-Development Master Lease or the Permanent Off-Site Master Lease, as applicable.
- In the event of a default-based termination of the Pre-Development Master Lease, the Post-Development Master Lease or the Permanent Off-Site Master Lease, as the case may be, Developer is obligated to recognize subtenants during the otherwise existing term of such master leases, to the extent the corresponding subleases are on the pre-approved form of sublease and exceed the sublease rent floor specified in such master leases.

190687
HAND DELIVERED
12/13/19

EXHIBIT A

Project Site Legal Description

EXHIBIT A

LEGAL DESCRIPTION

The land situated in the County of San Francisco, City of San Francisco, State of California, described as follows:

Lots 47 and 48 as said lots are shown on the map entitled "Parcel Map of a portion of Assessor's Block No. 3778, San Francisco, California", filed June 1, 1981, in Book 20 of Parcel Map, at Page 55, in the Office of the Recorder of the City and County of San Francisco, State of California.

Assessor's Lots 047 and 048, Block 3778

4849-5628-8046, v. 2

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

COMMENCING at a point on the Northeasterly line of Morris Street (formerly Morris Avenue), distant thereon 146 feet 6 Inches Southeasterly from the Southeasterly line of Bryant Street; running thence Southeasterly along said Northeasterly line of Morris Street 66 feet; thence at a right angle Northeasterly 250 feet; thence at a right angle Northwesterly 60 feet; thence at a right angle Southwesterly 175 feet; thence at a right angle Northwesterly 6 feet; thence at a right angle Southwesterly 75 feet to the point of commencement.

BEING a portion of 100 Vara Lots Nos. 308 and 309.

PARCEL B:

An undivided 175/1100 interest in and to the following described property:

BEGINNING at a point on the Southwesterly line of 5th Street distant thereon 122 feet 5 inches Southeasterly from the Southeasterly line of Bryant Street; running thence Southwesterly parallel with the Southeasterly line of Bryant Street 550 feet; thence at a right angle Southeasterly 30 feet; thence at a right angle Northeasterly 512 feet 6 inches; thence at a right angle Northeasterly to a point on said Southwesterly line of 5th Street, distant thereon 174 feet 10 inches Southeasterly from the Southeasterly line of Bryant Street; thence Northwesterly along said line of 5th Street 52 feet 5 inches to the point of beginning.

BEING a portion of 100 Vara Block No. 385.

APN: Lot 002B Block 3778

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF BRANNAN STREET, DISTANT THEREON 526 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 5TH STREET; RUNNING THENCE SOUTHWESTERLY ALONG THE SAID NORTHWESTERLY LINE OF BRANNAN STREET, 199.00 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 110.00 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 20.00 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 95.00 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 80.00 FEET TO THE NORTHEASTERLY LINE OF MORRIS STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY AND ALONG THE SAID NORTHEASTERLY LINE OF MORRIS STREET 132.50 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 137.87 FEET TO A LINE DRAWN PARALLEL WITH SAID SOUTHWESTERLY LINE OF 5TH STREET, THROUGH A POINT ON SAID NORTHWESTERLY LINE OF BRANNAN STREET, DISTANT THEREON 38.87 FEET NORTHEASTERLY FROM THE POINT OF BEGINNING; THENCE AT A RIGHT ANGLE SOUTHEASTERLY, ALONG LAST NAMED PARALLEL LINE, 243.50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 38.87 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 94.00 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 385.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF 6TH STREET AND THE NORTHWESTERLY LINE OF BRANNAN STREET; RUNNING THENCE NORTHEASTERLY AND ALONG SAID LINE OF BRANNAN STREET, 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 70 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 50 FEET TO THE NORTHEASTERLY LINE OF 6TH STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY, ALONG SAID LINE OF 6TH STREET, 70 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA BLOCK NO. 385.

PARCEL THREE:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF 6TH STREET, DISTANT THEREON 70 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF BRANNAN STREET;RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF 6TH STREET, 40 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 100 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 110 FEET TO THE NORTHWESTERLY LINE OF BRANNAN STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, ALONG SAID LINE OF BRANNAN STREET, 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 70 FEET; AND THENCE AT A RIGHT ANGLE SOUTHWESTERLY 50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 385.

PARCEL FOUR:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF 6TH STREET, DISTANT THEREON 110 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF BRANNAN STREET; RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF 6TH STREET, 71 FEET 6 INCHES; THENCE AT A RIGHT ANGLE NORTHEASTERLY 120 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 71 FEET, 6 INCHES; AND THENCE AT A RIGHT ANGLE SOUTHWESTERLY 120 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 385.

APN: Lot 5, Block 3778

EXHIBIT A TO GRANT DEED

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF BRANNAN STREET, DISTANT THEREON 275 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIFTH STREET; AND RUNNING THENCE SOUTHWESTERLY ALONG THE SAID NORTHWESTERLY LINE OF BRANNAN STREET, 251.00 FEET; THENCE AT A RIGHT ANGLE, NORTHWESTERLY 94.00 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 38.67 FEET; THENCE AT A RIGHT ANGLE, NORTHWESTERLY 243.50 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 112.13 FEET; THENCE AT A RIGHTANGLE, SOUTHEASTERLY 62.50 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 100.00 FEET; THENCE AT A RIGHT ANGLE, SOUTHEASTERLY 275.00 FEET TO THE POINT OF COMMENCEMENT.

BEING A PORTION OF 100 VARA BLOCK NO. 385.

Assessor's Parcel No. : Lot 4, Block 3778

PARCEL TWO:

Parcel A:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF FIFTH STREET, DISTANT THEREON 174 FEET AND 10 INCHES SOUTHEASTERLY FROM THE POINT FORMED BY THE INTERSECTION OF THE SOUTHWESTERLY LINE OF FIFTH STREET WITH THE SOUTHEASTERLY LINE OF BRYANT STREET;RUNNING THENCE SOUTHEASTERLY ALONG THE SAID SOUTHWESTERLY LINE, 100 FEET AND 2 INCHES; THENCE AT A RIGHT ANGLE, SOUTHWESTERLY 375 FEET; THENCE AT A RIGHT ANGLE, NORTHWESTERLY 122 FEET AND 7 INCHES; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 337 FEET AND 6 INCHES TO APOINT 37 FEET AND 6 INCHES SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF FIFTH STREET; RUNNING THENCE IN A NORTHEASTERLY DIRECTION, 43 FEET AND 6 INCHES, MORE OR LESS, TO THE SOUTHWESTERLY LINE OF FIFTH STREET, AT A POINT DISTANT 174 FEET AND 10 INCHESSOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF BRYANT STREET, WHICH IS THE POINT OF BEGINNING.

Parcel B:

AN UNDIVIDED 375/1100THS INTEREST IN AND TO THE FOLLOWING DESCRIBED PROPERTY, TO WIT:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF FIFTH STREET,DISTANT THEREON 122 FEET AND 5 INCHES SOUTHEASTERLY FROM THE POINT FORMED BY THE INTERSECTION OF THE SOUTHWESTERLY LINE OF FIFTH STREET WITH THE SOUTHEASTERLY LINE OF BRYANT STREET; RUNNING THENCE SOUTHWESTERLY, PARALLEL WITH THE SOUTHEASTERLY LINE OF BRYANTSTREET, 550 FEET; THENCE AT A RIGHT ANGLE, SOUTHEASTERLY 30 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 512 FEET AND 6 INCHES; THENCE NORTHEASTERLY TO A POINT ON SAID SOUTHWESTERLY LINE OF FIFTH STREET, DISTANT THEREON 174 FEET AND 10 INCHES SOUTHEASTERLY FROMTHE SOUTHEASTERLY LINE OFBRYANT STREET; THENCE NORTHWESTERLY ALONG SAID LINE OF FIFTH STREET, 52 FEET AND 5 INCHES TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA LOTS NUMBERS 307 AND 308.

Parcel C: INTENTIONALLY DELETED

Assessor's Parcel No. : Lot 18, Block 3778

EXHIBIT B.1

Project Description

San Francisco Flower Mart Project

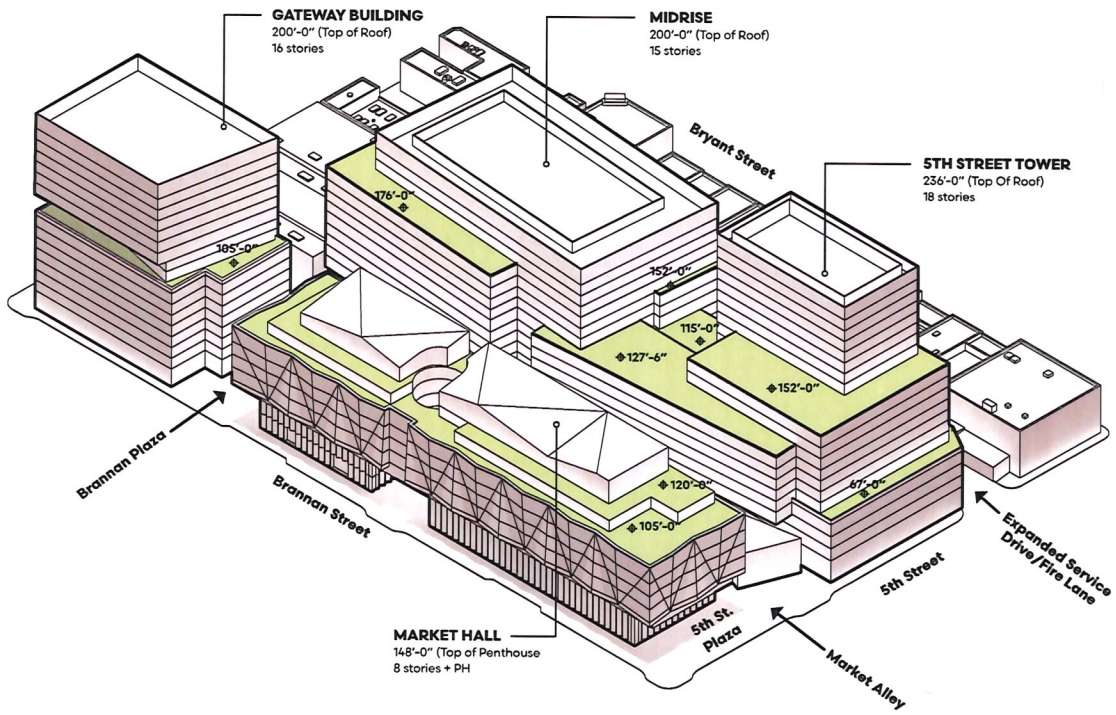
PROJECT DESCRIPTION

PARCEL	BLOCK 3778 LOT 1B, 2B, 4, 5, 47, 48
LOT AREA	286,368 SF 6.57 acres
EXISTING USES	Wholesale Flower Market + Surface Parking
	Lot 47 (Vacant) 27,088 sf
PROPOSED USE	Wholesale Flower Market, Retail, Office, & Underground Garage Parking
USE DISTRICT	CMUO / MUR
SPECIAL USE DISTRICTS	Central SOMA
HEIGHT / BULK	270-CS / 160-CS
OCCUPANCIES	A-2 Restaurant + Bar, A-3 Terraces, A-5 Bleacher, B Office, M Market + Retail
CONSTRUCTION TYPE	Type 1A, Fully sprinklered All new construction

The project site is located in San Francisco's South of Market (SoMa) District on Assessor's Block 3778, which is bounded by Fifth Street to the north, Brannan Street to the east, Sixth Street to the south, and Bryant Street to the west, and within the recently adopted Central SoMa Special Use District.

The San Francisco Flower Mart Project ("Project") would include the demolition of all the existing buildings on the project site, including the Existing Wholesale Flower Market, the surface parking lot, and additional vacant buildings. The Project would include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing 2,032,165 gross square feet of office space, 83,460 gross square feet of retail space (including 10,000 rentable square feet of flower retail space), and a new wholesale flower market consisting of 115,000 rentable square feet of flower vendor space plus adjacent at-grade and below-grade loading areas ("New Wholesale Flower Market"). The Market Hall Building would front Brannan Street and be approximately 148 feet tall. The Blocks Building would be north of the Market Hall Building and range from approximately 200 to 236 feet in height. The Gateway Building would rise to 200 feet on the corner of Sixth and Brannan streets.

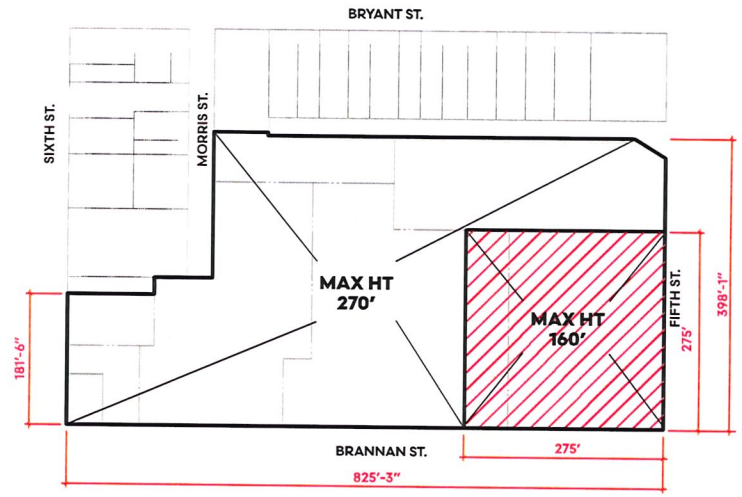
The Project would also include 145,000 square feet of public and private open space. Of this, 31,450 square feet of POPOS is to be provided at street level, including 8,125 square feet under the Market Hall Building's cantilevered ends. An additional 5,200 square feet will be provided off site. The remaining open space would include 36,000 square feet of living roof and multiple tenant terraces.




461
320

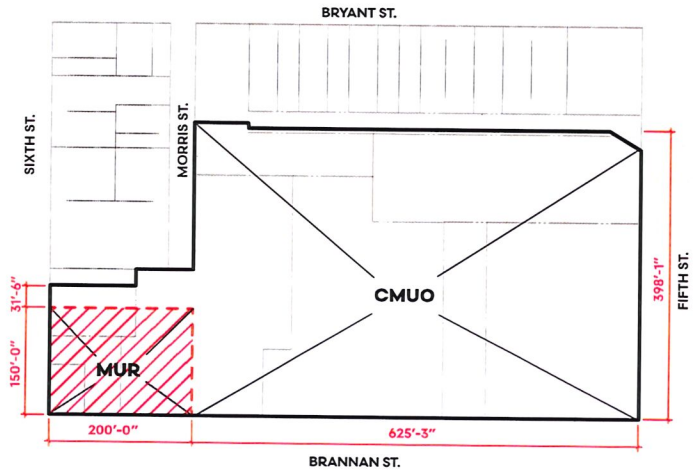
Planning Code Summary

HEIGHT DISTRICT OVERLAY



ZONING OVERLAY

Mixed Use Residential (MUR) + Central Soma Mixed Use Office (CMUO)



VEHICLE PARKING
Per Zoning Code

Planning Code Table 151.1
Planning Code Table 152.1
Planning Code Table 155.2
Exception Requested Under Central SoMa Key Sites 329(e)(3)(B) for Wholesale Flower Market Parking

Off-street parking would be provided in the basement and would include a total of 784 parking spaces. These would include 59 tall van parking spaces. The wholesale flower market would have exclusive use of 141 car parking spaces and primary use of up to 50 tall van parking spaces. Retail is permitted 56 car spaces. Office would have use of up to 563 car parking or van spaces. Fifteen spaces would be reserved for car share.

Off-street loading would include an at-grade loading dock for four large trucks adjacent to the new wholesale flower market plus 24 below-grade truck spaces and two semi-truck spaces. Twenty-three of the below-grade medium truck spaces would be reserved for the new wholesale flower market during peak wholesale hours and shared by office and retail vehicles during off-peak hours. The remaining three below-grade truck spaces would be reserved for office and retail use. The new wholesale flower market would also have access to up to 100 of the office and retail parking spaces before 8 AM every day.

1. Permitted Parking

Program	gfa	ofa		Spaces
Retail	83,459	49,035	1:1500 gfa	56
Office	2,032,165	1,970,075	1:3500 ofa	563
			Subtotal	619

2. Wholesale Flower Market

Exception Requested Under Central SoMa Key Sites 329(e)(3)(B)

Non Retail Sales & Services	113,036	111,869		150
			Total Spaces Permitted by Program	**769**

3. Car Share

769	1:50	15
	Subtotal	15

Total Auto Parking Spaces Provided* **784***

4. Off-Street Loading Spaces Required

Program	gsf	ofa	Loading Spaces
Retail	83,459	49,035	2
Office	2,032,165	1,970,075	19
Wholesale FM	113,036	111,869	2
		Total	23

5. Off-Street Loading Spaces Provided

At-grade	Wholesale FM	12' x 73'	4
B-02 Basement	Wholesale FM (shared with other uses)	12' x 36' 12' x 40'	13* 10*
	Office	12' x 40'	1
	Office	12' x 56'	2
		Total	30

*PARKING NOTES

WFM & Office Car Parking
Parking spaces include 59 tall van spaces 18'-0" x 8'-6". See B2 level basement parking plan for location and distribution

WFM, Office and Retail Freight Loading
Provided for prioritized use by wholesale flower market tenants and customers. Office and retail tenants are to have access to these loading spaces when not in use by the wholesale flower market.

BICYCLE PARKING
Required

6. Class 1

			Spaces
Office	1,970,075 ofa	1:5000 ofa	394
Retail	26,710 ofa	1:7,500 ofa	4
Eating	22,325 ofa	1:7,500 ofa	3
Non-Retail Sales	111,869 ofa	1:12,000 ofa	9
		Subtotal	**410**

7. Class 2

			Spaces
Office	1,970,075 ofa	2 + 1:50,000 over 5,000	41
Retail	26,710 ofa	1:2,500 ofa	11
Eating	22,325 ofa	1:750 ofa	30
Non-Retail Sales	111,869 ofa	4 if > 50,000 sf	4
		Subtotal	**86**

8. Showers & Lockers

Per TDM Active-3		Qty.
Showers	1:30 Class 1 Spaces	**14**
Lockers	6:30 Class 1 Spaces	**84**

Planning Code Summary

PRIVATELY OWNED PUBLIC OPEN SPACE

Exceptions Requested under Central SoMa Key Sites 329(e)(3)(B)(vii)

Privately Owned Public Open Space 138(d)(2)

Planning Code Sections 138 requires that POPOS be open to the sky, allowing up to 10% of the required open space to be included under a building overhang. This project requests an exception as provided under Section 329(e)(3)(B)(vii) to allow up to 20% of the required POPOS space under the cantilevered ends of the Market Hall Building and the edge of the Gateway Building. These spaces have dynamic clear heights varying between 20' - 40'. An additional 5,193 sf of public amenity space will be provided offsite.

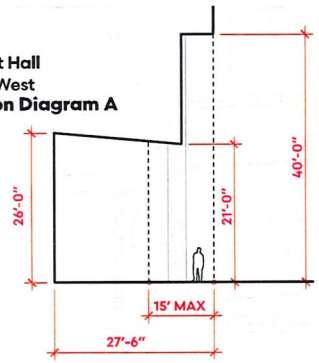
POPOS Required for Office Program Only		sf
Office	2,032,165 gsf @ 1:50	40,643
	Total	**40,643**

POPOS Proposed		sf
Open to Sky	27,325 sf @ 100%	27,325
Under Cantilever with 20' - 40'-0" clr. (Up to 10% Allowed)	8,125 sf @ 100%	8,125
Offsite Public Amenity	5,193 sf @ 100%	5,193
	Total	**40,643**

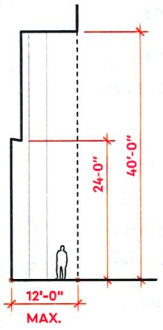
LEGEND

- POPOS Open to Sky
- Building Footprint
- Context Buildings
- POPOS Under Cantilever

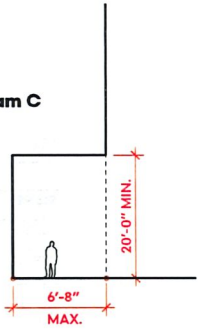
Market Hall
East/ West
Section Diagram A

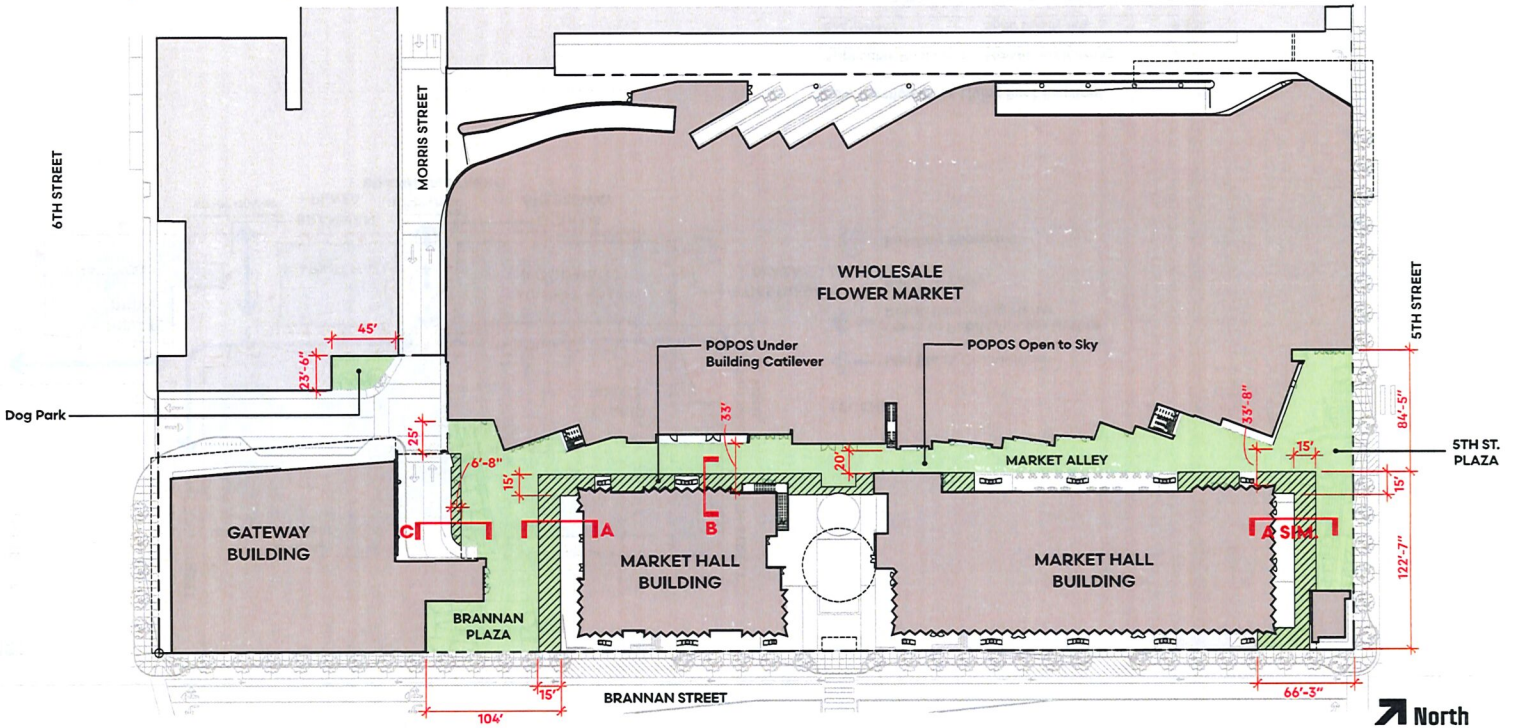


Market Hall
North/ South
Section Diagram B



Gateway
East/ West
Section Diagram C



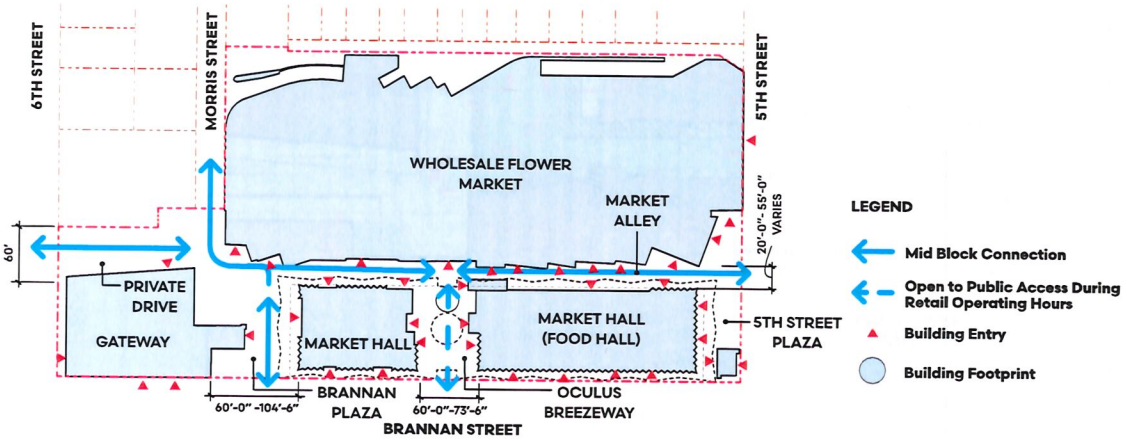


Planning Code Diagrams

MID BLOCK PASSAGE AND PEDESTRIAN ENTRIES

Complies
Planning Code Section 270.2(e)(4)

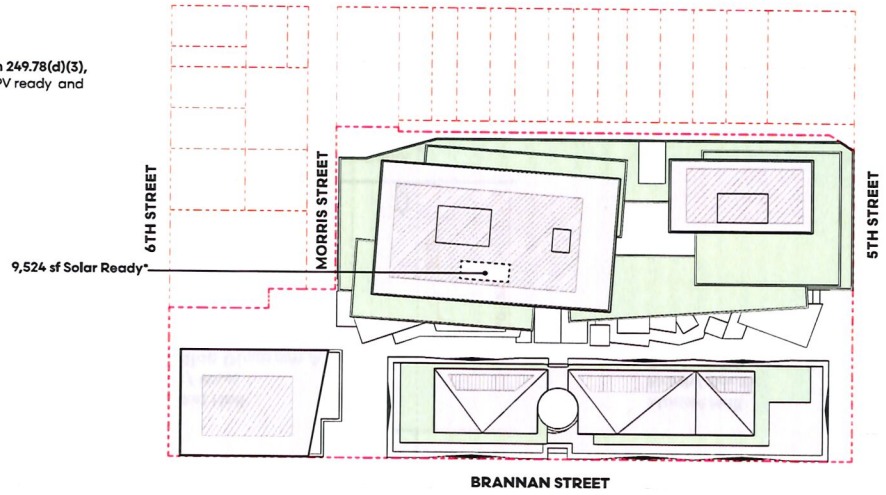
Planning Code Section 270.2 currently requires 20'- 0" wide minimum midblock connections in WMUO and SALI districts. The Market Alley is a midblock passage that varies between 20'-0' and 55'-0" in width. The Market Alley will begin at 5th Street and connect to 6th Street through the new private drive extension. Brannan Plaza will connect Morris Street to Brannan Street, completing the existing through block passage. The new sidewalk directly adjacent to the site on the east side of Morris Street will be 5.5'. The sidewalks along the private drive extending the Market Alley and connecting Morris Street to 6th Street will be a minimum of 6'-0" wide. An additional connection through the Market Hall breezeway will connect Brannan Street to the Market Alley during the retail and Market Hall Food Hall operating hours.



CENTRAL SOMA SUD ROOFS

COMPLIES
Planning Code Section 149
Planning Code Section 249.78(d)(3)

Under **Planning Code Sections 149** and **Section 249.78(d)(3)**, the Market Hall Building is required to provide PV ready and living roof.



Solar Ready and/or Living Roof Required		sf
Applicable Roof Area	Market Hall Building	63,495
Section 149	Solar Ready 15%	**9,524**
Section 249.78(d)(3)	Living Roof 50%	**31,748**

Project Proposal		sf
Market Hall	Living Roof	4,336
Blocks Building	Living Roof	32,579
Total		**36,915**
Blocks Building	Solar Ready Roof*	9,524

*** Precise Location To Be Determined**

North

Bulk Diagrams

MARKET HALL BULK LIMITS AND SETBACKS

Exceptions Requested under Central SoMa Key Sites 329(e)(3)(B)

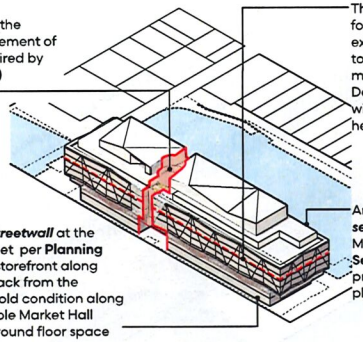
Streetwall	132.4(d)(1)
Setbacks	132.4(d)(2)
Midblock Passage Setbacks	261.1(d)(4)

Modification Requested under 270.1(d)

Horizontal Mass Break	270.1(d)

A modification is requested for the means of articulation and placement of the ***horizontal mass break*** required by **Planning Code Section 270.1(d)** (see diagram 1 below)

The **Key Sites Development Guidelines** outline flexibility for ***setbacks*** required by **Code Section 132.4(d)(2).** An exception is requested to raise the ***podium height*** to 105' to accommodate required structural elements while maintaining the generous floor to floor heights at grade. Despite this increase, the Market Hall building complies with skyplane shadow restrictions with the 85' base height (see diagrams on Page 8)



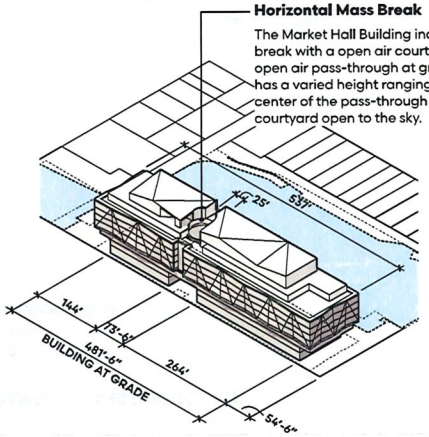
An exception is requested for the ***midblock passage setback and sun access plane*** requirement along the Market Alley, interior to the project, as required by **Code Section 261.1.** The upper massing has been shifted to the project interior to maintain light and openness along the plazas and existing streets (see diagram 3, bottom right)

An exception is requested for ***streetwall*** at the Market Hall along Brannan Street per **Planning Code Section 132.4(d)(1).** The storefront along much of Brannan Street is setback from the property line to create a threshold condition along Brannan for the highly permeable Market Hall space that is planned for the ground floor space

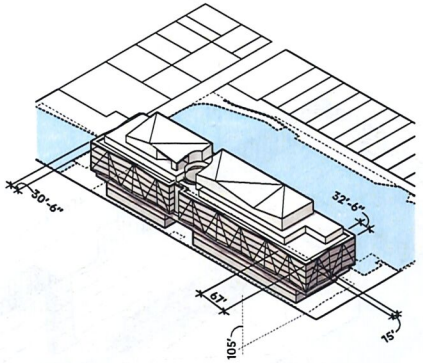
1. View from Northeast
Horizontal Mass Reduction per Code Section 270.1

Horizontal Mass Break

The Market Hall Building includes a horizontal mass break with a open air courtyard and a 61'-0" wide open air pass-through at grade. The pass-through has a varied height ranging from 25'-6"- 32'. At the center of the pass-through is a 36'-0" diameter courtyard open to the sky.



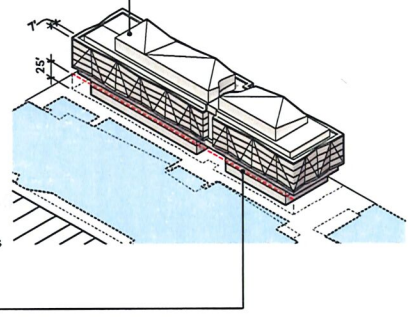
2. View from Northeast
Podium Setbacks at 5th Street, Brannan Street, and Brannan Plaza per Code Section 132.4



3. View from Southwest
Podium Setbacks along Market Alley per Code Section 132.4
Midblock Passage Setbacks per Code Section 261.1(d)(4)

Podium Setback

Upper Levels 8 and Penthouse are dynamically shaped to reduce mass impact. Though the upper plates have a shallow setback along the Market Alley, they are located so that they would not be visible from grade.



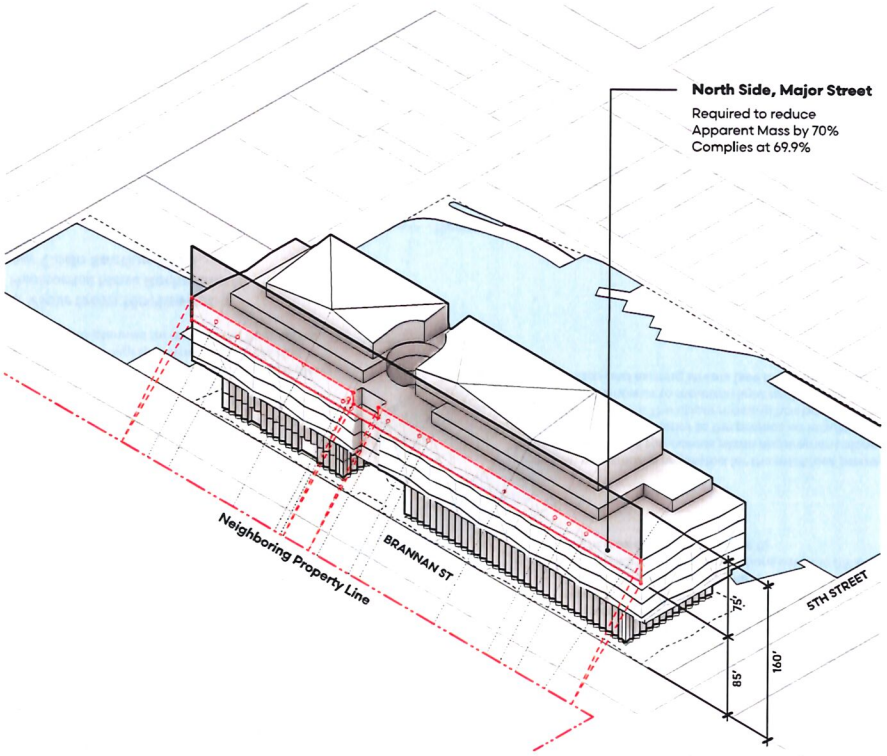
Midblock Passage Setback

The building mass has been pushed interior to the block to maintain openess along Brannan and 5th Streets and their associated plazas. An exception is requested for the midblock passage setback requirement along the Market Alley.

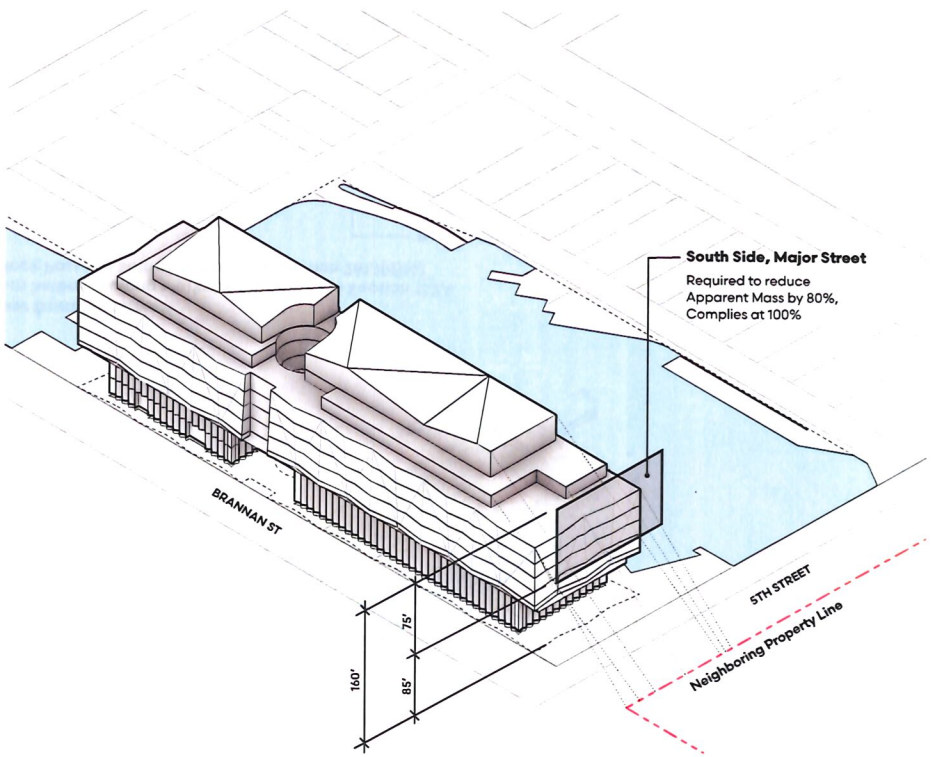
Bulk Diagrams

MARKET HALL APPARENT MASS REDUCTION

View from Northeast
Skyplane at Brannan Street
Complies with Code Section 270(h)



View from Northeast
Skyplane at 5th Street
Complies with Code Section 270(h)

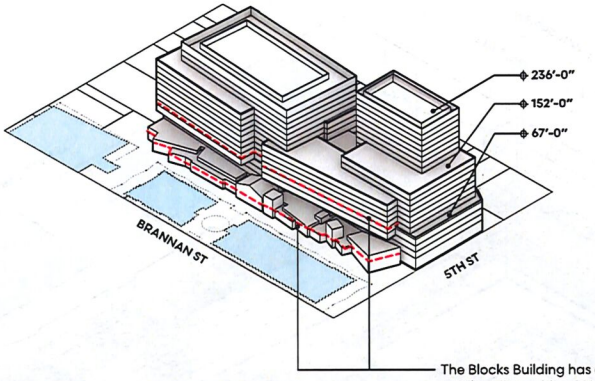


Bulk Diagrams

BLOCKS BUILDING BULK LIMITS AND SETBACKS

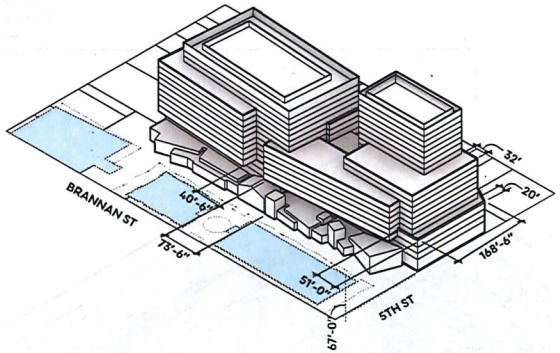
Exceptions Requested under
Central SoMa Key Sites 329(e)(3)(B)

Setbacks	132.4
Midblock Passage Setback	261.1(d)(4)

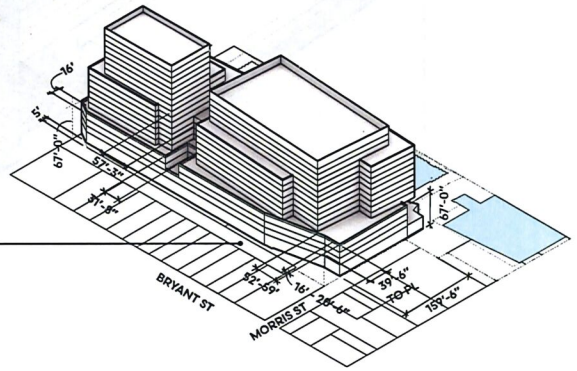


The Blocks Building has an expressed retail podium with a 20'-6"-43'-0" height, exceeding 25' ***midblock passage setback*** height prescribed by **Planning Code Section 261.1(d)(4)**. Additionally, the upper building projects above the lower retail podium so that the 85' upper podium ***setback*** per Planning **Code section 132.4** does not continue along the Market Alley.

1. View from Northeast
Podium Setbacks along 5th Street
Complies with Code Section 132.4



2. View from Southwest
Podium Setbacks along existing Service Drive
Complies with Code Section 132.4



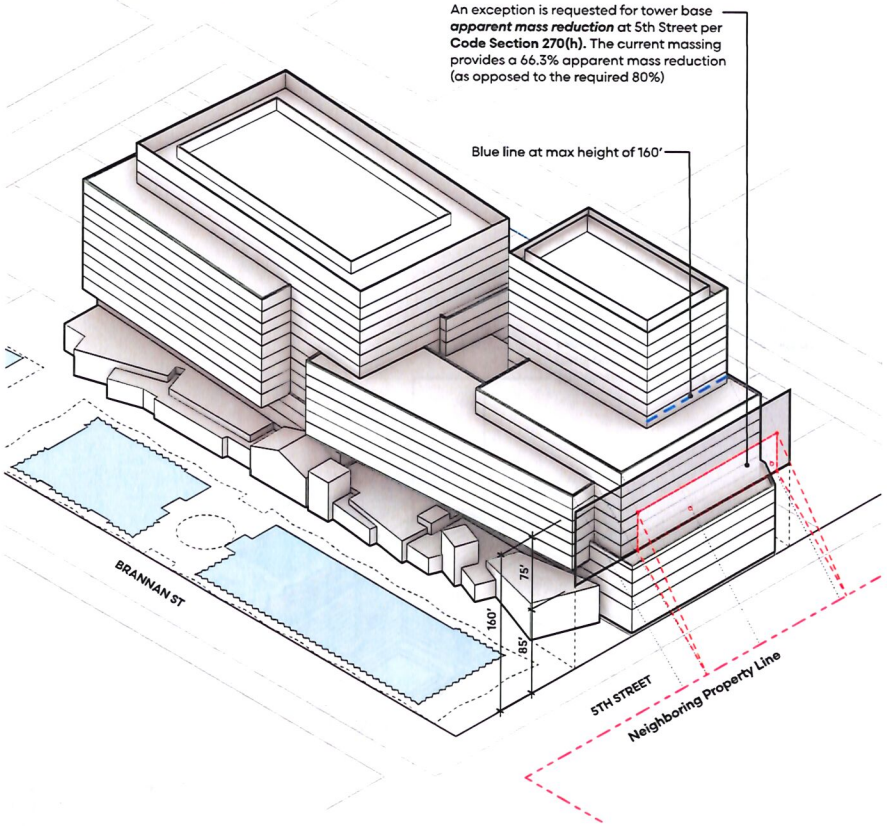
Existing Service Drive

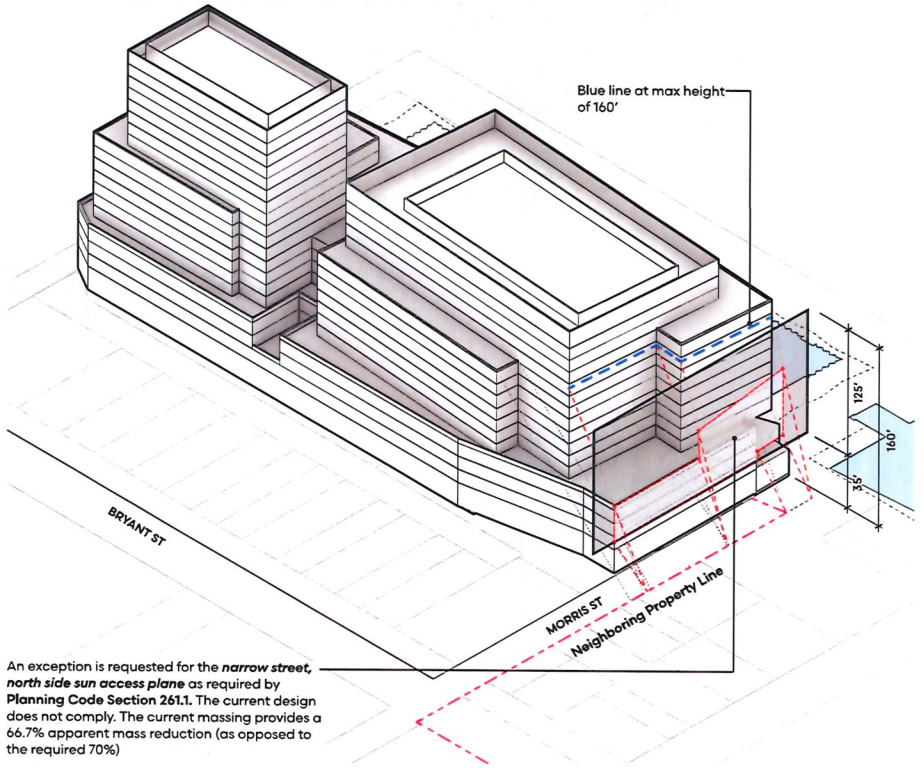
Shared lot internal to block. Existing drive is widened from 30' to 35'. The entire building is setback a minimum of 5' from the property line at service drive. Upper buildings are stepped back further to mitigate wind and further reduce shadow impact.

Bulk Diagrams

BLOCKS BUILDING APPARENT MASS REDUCTION

Exception Requested under
Central SoMa Key Sites 329(e)(3)(B)
Narrow St Sun Access Plane 261.1





Planning Code Diagrams

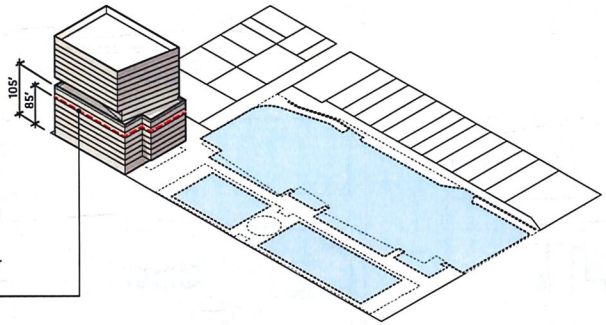
GATEWAY BUILDING PLANNING DIAGRAMS

Exceptions Requested under Central SoMa Key Sites 329(e)(3)(B)

Podium Setbacks	**132.4**
Apparent Mass Reduction	**270(h)**
Midblock Passage Setback	**261.1(d)(4)**

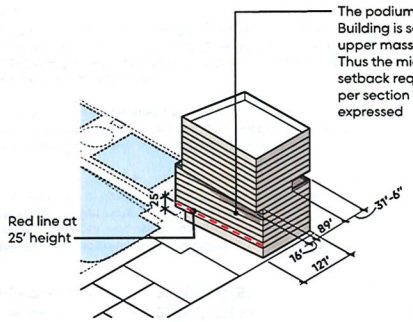
Setbacks
The podium height at 105' of the Gateway Building is aligned to the Market Hall Building at 105' instead of the prescribed 85'

The datum above podium is expressed with a 22' high setback at floors 9-10 to reinforce the ***urban room*** (see diagrams below). Floors 11-16 above are not ***setback*** along Brannan Street, 6th Street, and along the interior property line per **Planning Code Section 132.4.**

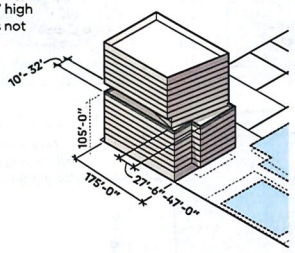


Podium Setbacks per Code Section 132.4

The podium of the Gateway Building is setback from the upper mass of the building. Thus the midblock passage setback required at 25' high per section 161.1(d)(4) is not expressed



View from Southwest

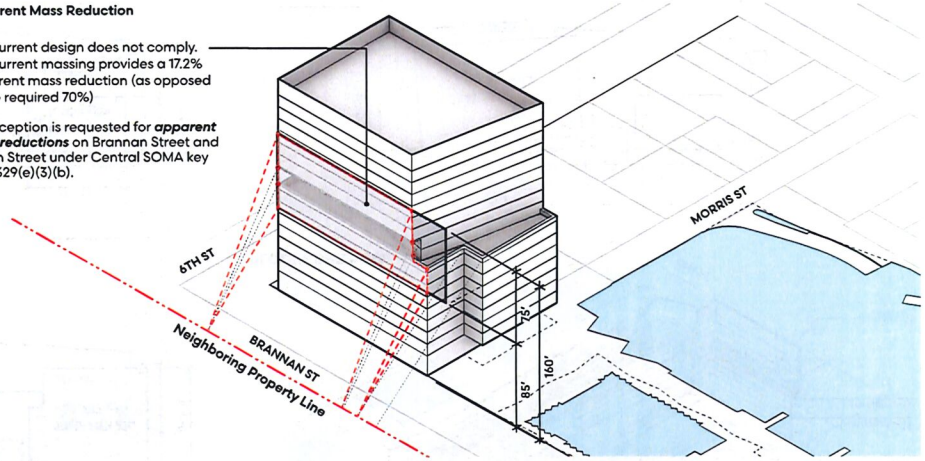


View from Northeast

Apparent Mass Reduction

The current design does not comply. The current massing provides a 17.2% apparent mass reduction (as opposed to the required 70%)

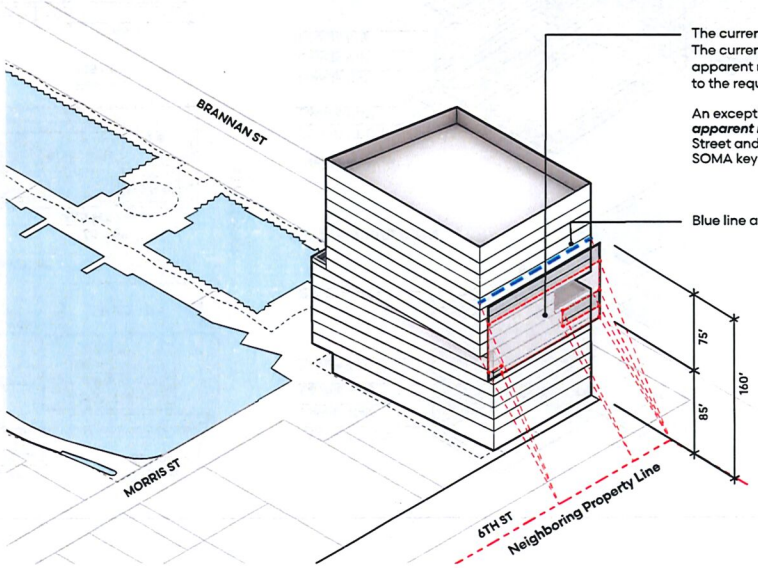
An exception is requested for ***apparent mass reductions*** on Brannan Street and on 6th Street under Central SOMA key sites 329(e)(3)(b).



The current design does not comply. The current massing provides a 31.4% apparent mass reduction (as opposed to the required 70%)

An exception is requested for ***apparent mass reductions*** on Brannan Street and on 6th Street under Central SOMA key sites 329(e)(3)(b).

Blue line at max height of 160'



Tower Bulk Diagrams

TOWER PLATES AND TOWER SEPARATION

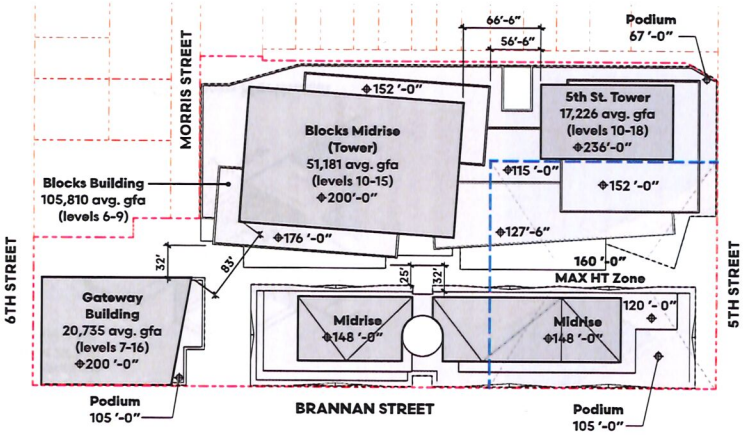
Exceptions Requested under Central SoMa Key Sites 329(e)(3)(B)

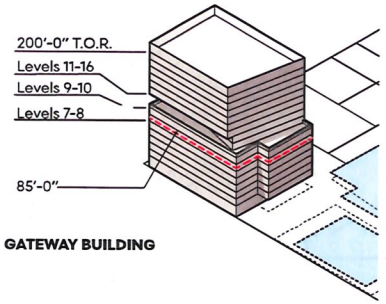
Tower Separation	132.4
Tower Plates	270(h)(3)(A)
Tower Plan Dims	270(h)(3)(B)

Per the **Key Development Site Guidelines** the midrise height internal to the block has been raised from 160' per to 200'. Additionally, to eliminate shadows on neighboring Victoria Manolo Park, the project's overall building heights were reduced and the floor area was redistributed across the site.

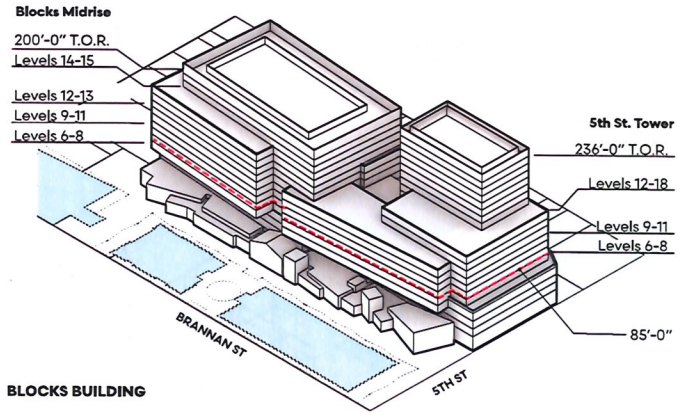
The **Key Sites Development Guidelines** outline potential flexibility for ***tower separation*** per **Code Section 132.4** and ***tower bulk*** per **Code Section 270(3)**

Exceptions are requested per:
Central SoMa Key Site 329(e)(3)(B) for Tower Separation 132.4, Tower Plate Area 270(h)(3)(A), and Tower Plate Dimensions 270(h)(3)(A) for the Gateway Building and for the Blocks Building.

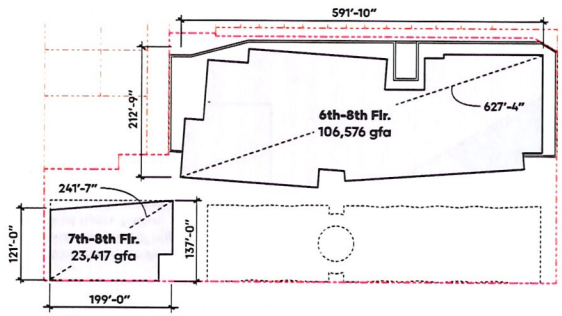


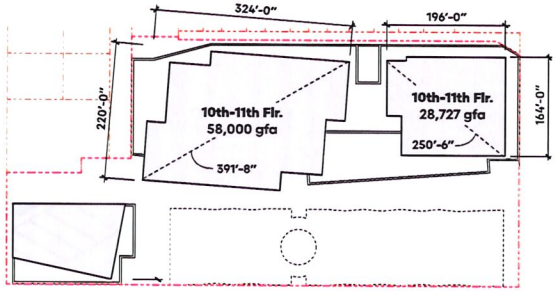


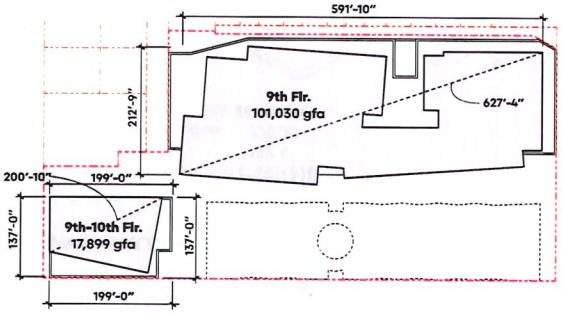
GATEWAY BUILDING

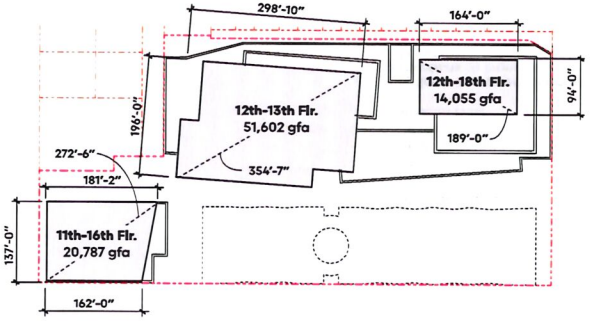


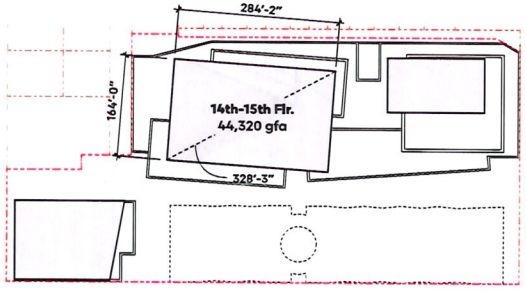
BLOCKS BUILDING









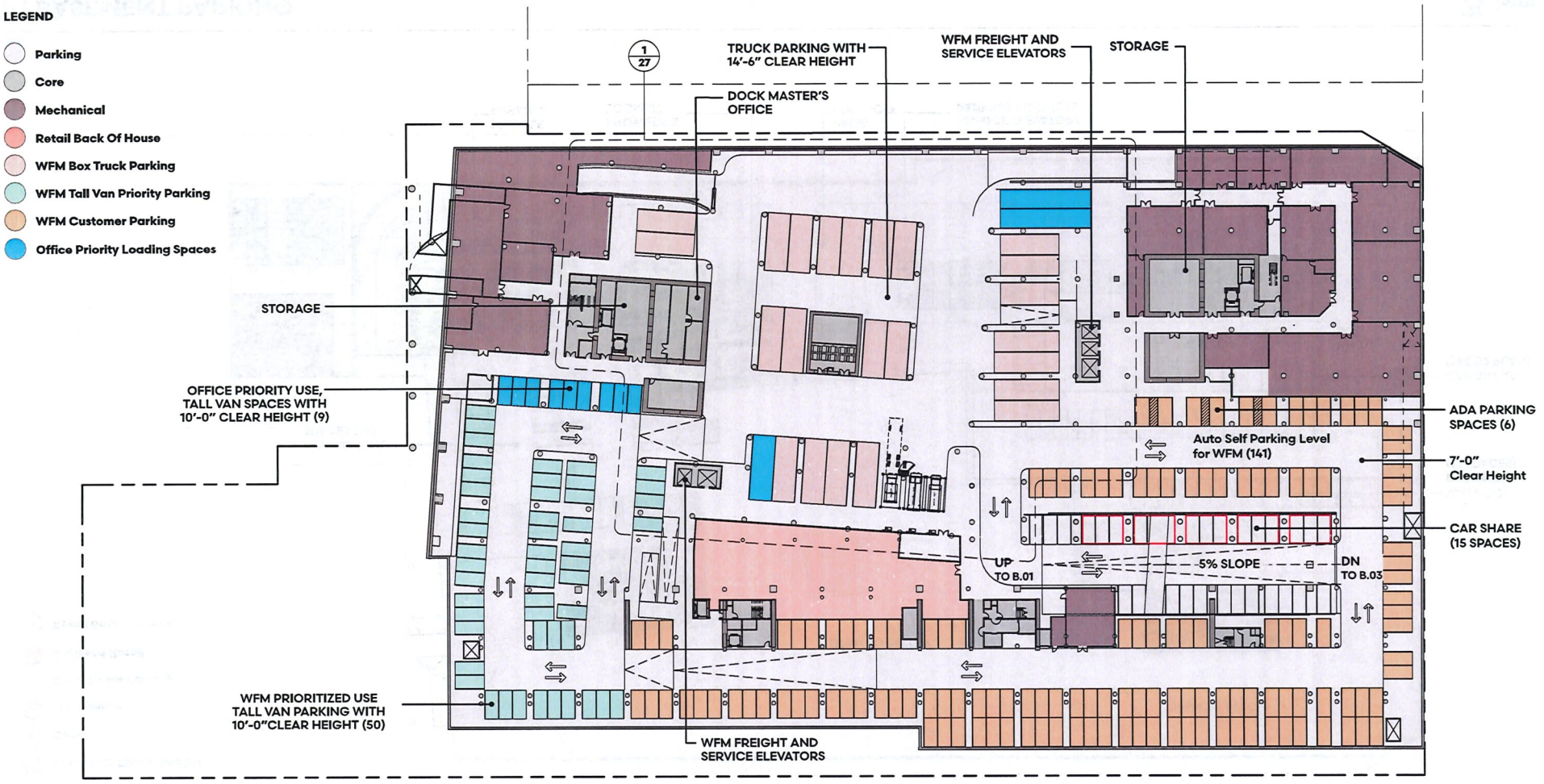


Project Summary

GROSS SQUARE FOOTAGE (GSF)	EXISTING USES	EXISTING USES TO BE RETAINED	NET REQ.	NET NEW PROVIDED	PROJECT TOTALS
ABOVE GRADE					
Wholesale Flower Market (warehouse)	141,992	113,036		0	113,036
Wholesale Flower Market (retail)	4,900 (restaurant)	4,900		5,100	10,000
Wholesale Flower Market (loading)	0	0		20,000	20,000
TOTAL FLOWER MART GSF	**146,892**	**117,936**		**25,100**	**143,036**
Residential	0	0		0	0
Retail	0	0		73,459	73,459
Office	0	0		2,032,165	2,032,165
Lot 47 Vacant	27,088	0		0	0
Other Industrial / PDR	18,461	0		0	0
TOTAL ABOVE GRADE GSF	**45,549**	**0**		**2,105,624**	**2,105,624**
AUXILIARY USES BELOW GRADE					
Wholesale Flower Market Parking	50,000	50,000		28,779	78,779
Wholesale Flower Market Trucks				48,780	48,780
Wholesale Flower Market Mech/Service				4,700	4,700
Other Parking	41,745	41,745		247,883	289,628
Cores + Other Uses				123,621	123,621
TOTAL BELOW GRADE GSF	**91,745**	**91,745**		**453,763**	**545,508**
PROJECT FEATURES					
Dwelling Units	0	0		0	0
Hotel Rooms	0	0		0	0
Wholesale Flower Market Car Parking Spaces	144	144		6	150
Wholesale Flower Market Truck Parking Below Grade	0	0		23	23
Other Uses Freight Loading Below Grade	0	0		3	3
Other Parking Spaces	105	105	619	514	619
Class 1 Bike Parking Spaces	0	0	410	410	410
Class 2 Bike Parking Spaces	0	0	86	86	86
Disabled Parking Spaces	10	10	31	21	31
Car Share Spaces	0	0	15	15	15
At-Grade Loading Spaces	0	0		4	4
Number of Buildings	12	0		3	3
Height of Buildings	115.9' to 29'4			85'-105' podium, 160'-200' midrise, 236' tower	85'-105' podium, 160'-200' midrise, 236' tower
Number of Stories	1 + Mezzanine			up to 18	up to 18

Cumulative Retail Gross Floor Area

Basement Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
B-02		8,020				8,020
	Total	**8,020**	**0**	**0**	**0**	**8,020**
Market Hall Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		4,860	8,478		20,511	33,849
2nd Floor		12,162		6,488		18,650
Market Hall Penthouse			8,404			8,404
	Total	**17,022**	**16,882**	**6,488**	**20,511**	**60,903**
Blocks Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		5,411		1,967	665	8,043
	Total	**5,411**	**0**	**1,967**	**665**	**8,043**
Gateway Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		6,493				6,493
	Total	**6,493**	**0**	**0**	**0**	**6,493**
Total Project Retail GFA		**36,946**	**16,882**	**8,455**	**21,176**	**83,459**



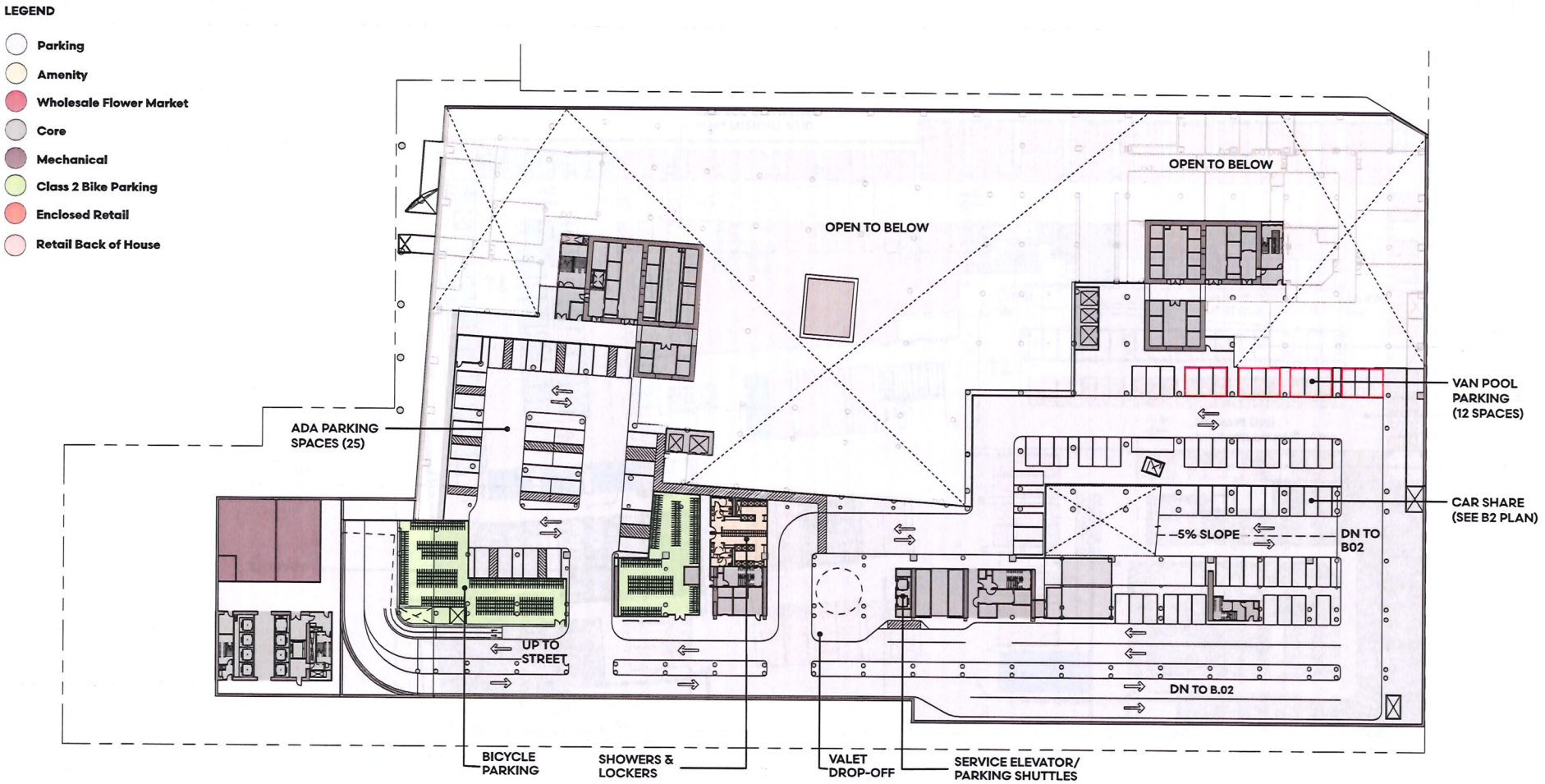
B2 BASEMENT PARKING

1" = 60'-0"

North

KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

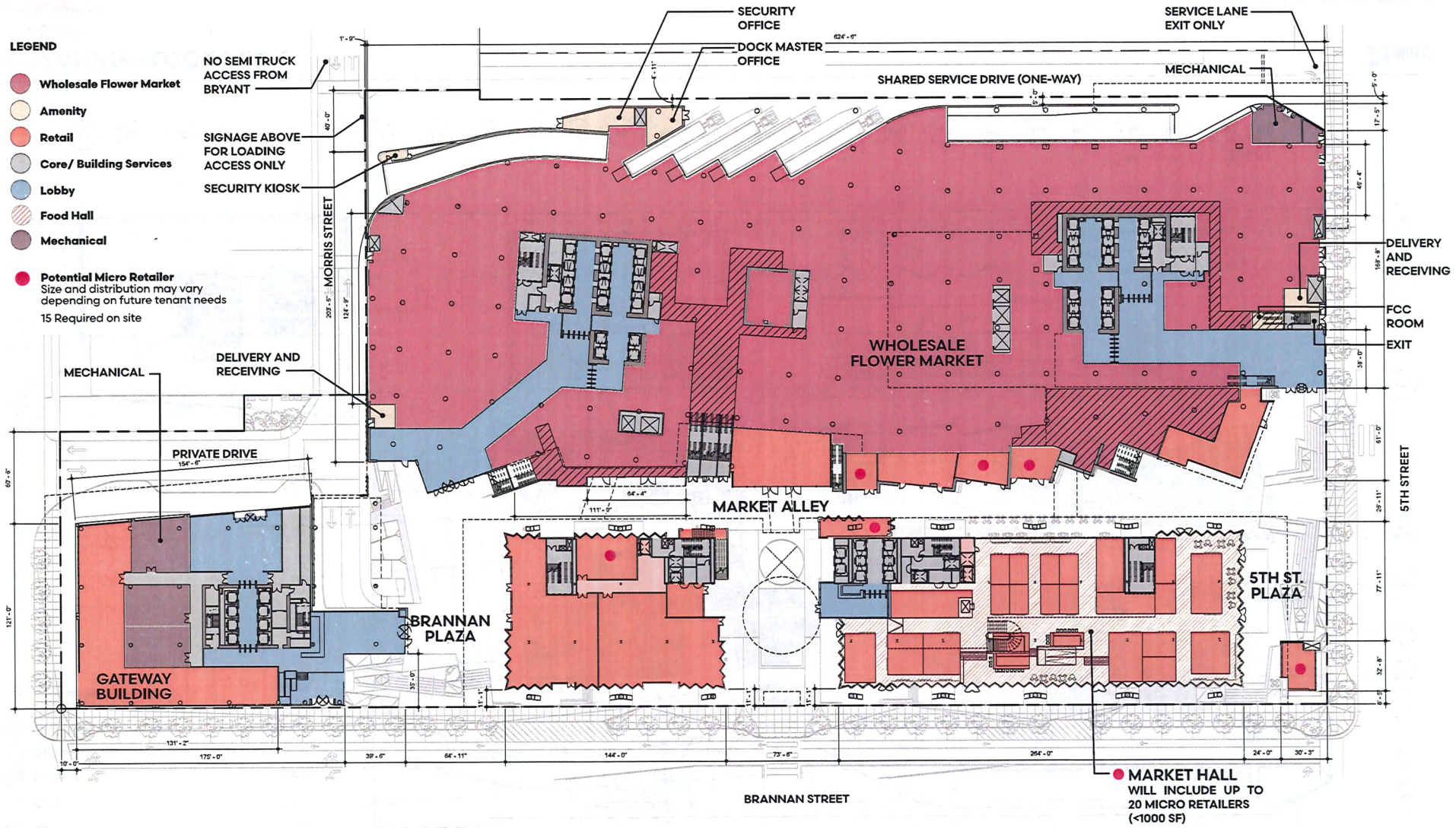


B1 BASEMENT PARKING

1" = 60'-0"

North

KILROY



GROUND FLOOR PLAN

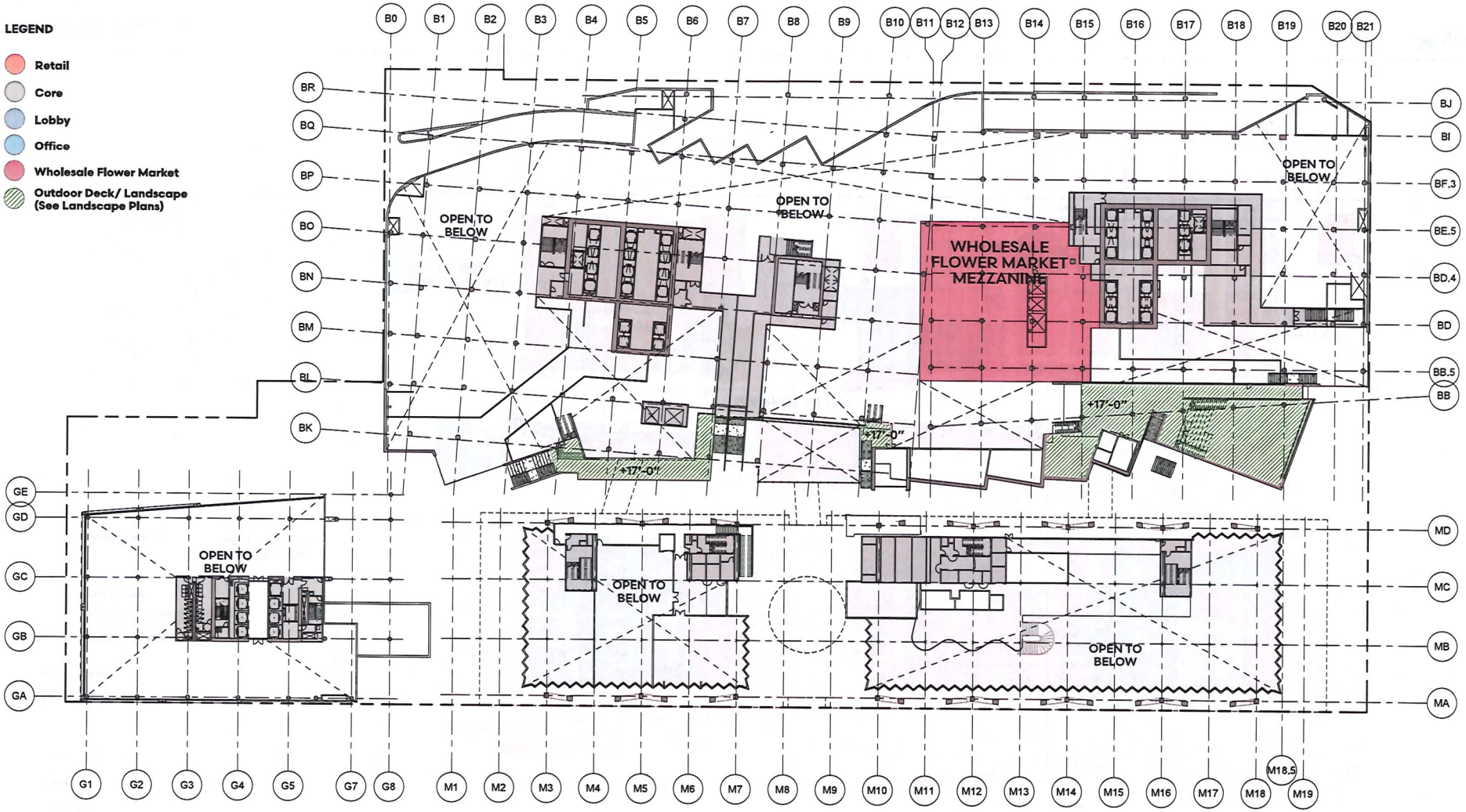
1" = 60'-0"

North

KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

SF FLOWER MART 190610 30



MEZZANINE FLOOR PLAN

1" = 60'-0"

North

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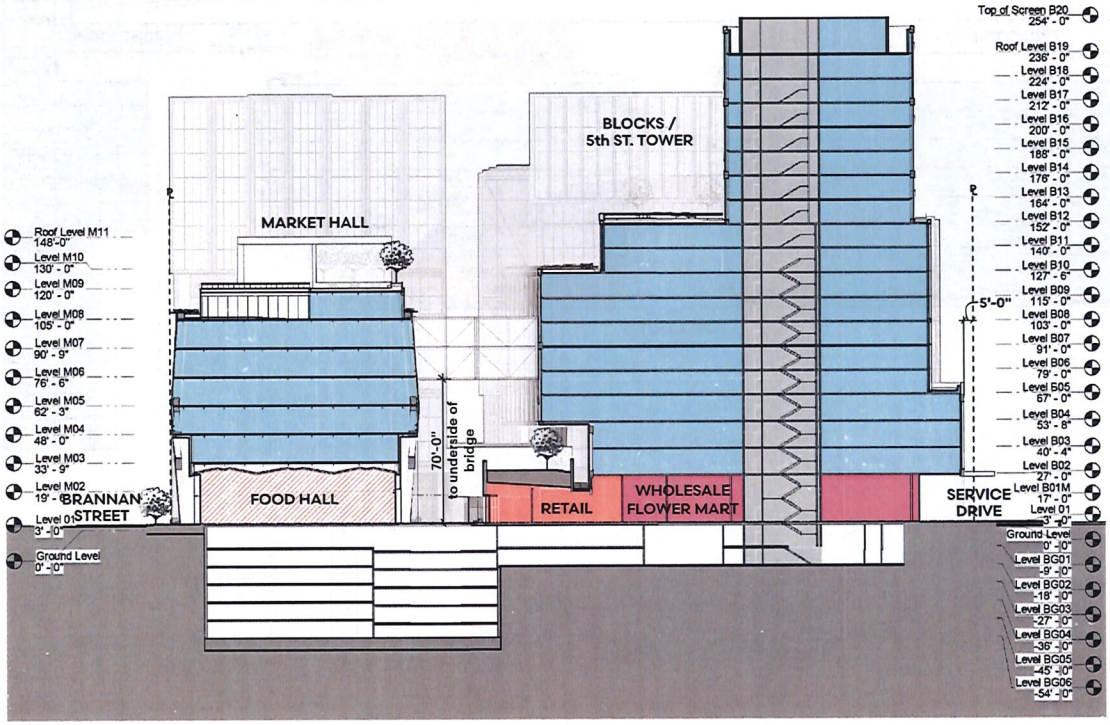
SF FLOWER MART 190610 31

LEGEND

- Office
- Retail
- Core
- Lobby
- Wholesale Flower Market
- Food Hall



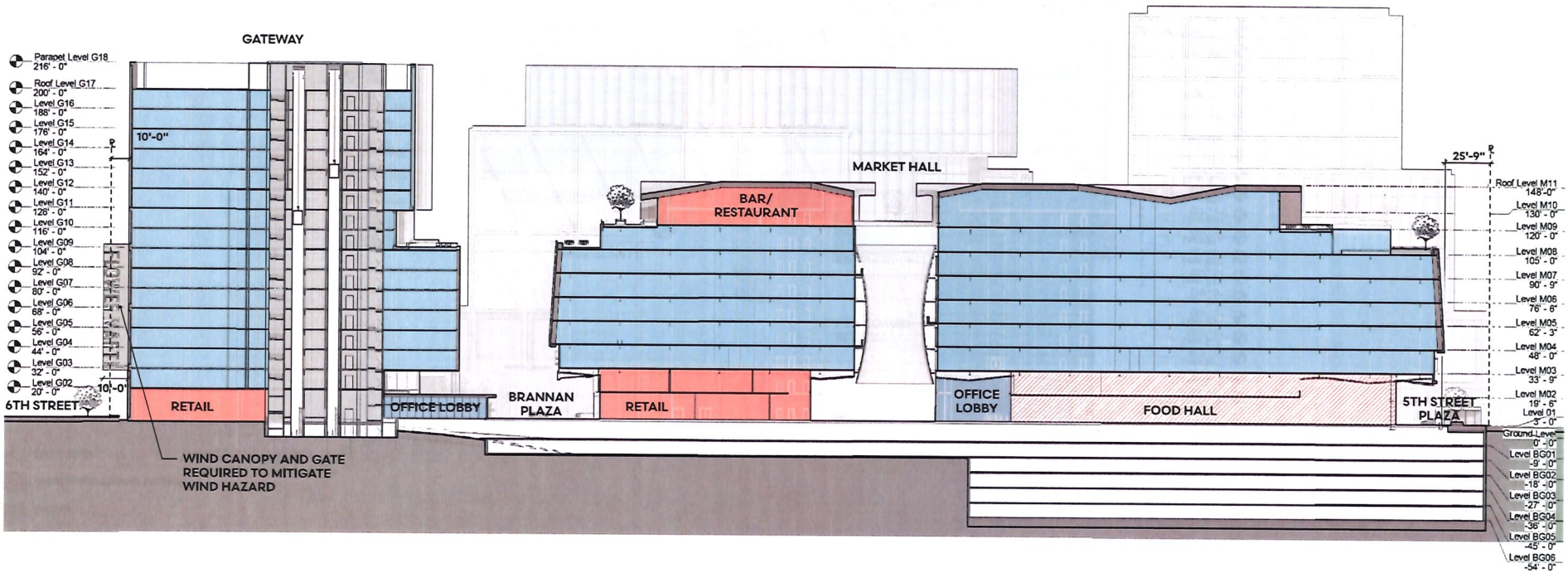
NORTH-SOUTH SECTION

1" = 60'-0"

KILROY

LEGEND

- Office
- Retail
- Core
- Lobby
- Wholesale Flower Market
- Food Hall



EAST-WEST SECTION THROUGH MARKET HALL AND GATEWAY

1" = 60'-0"

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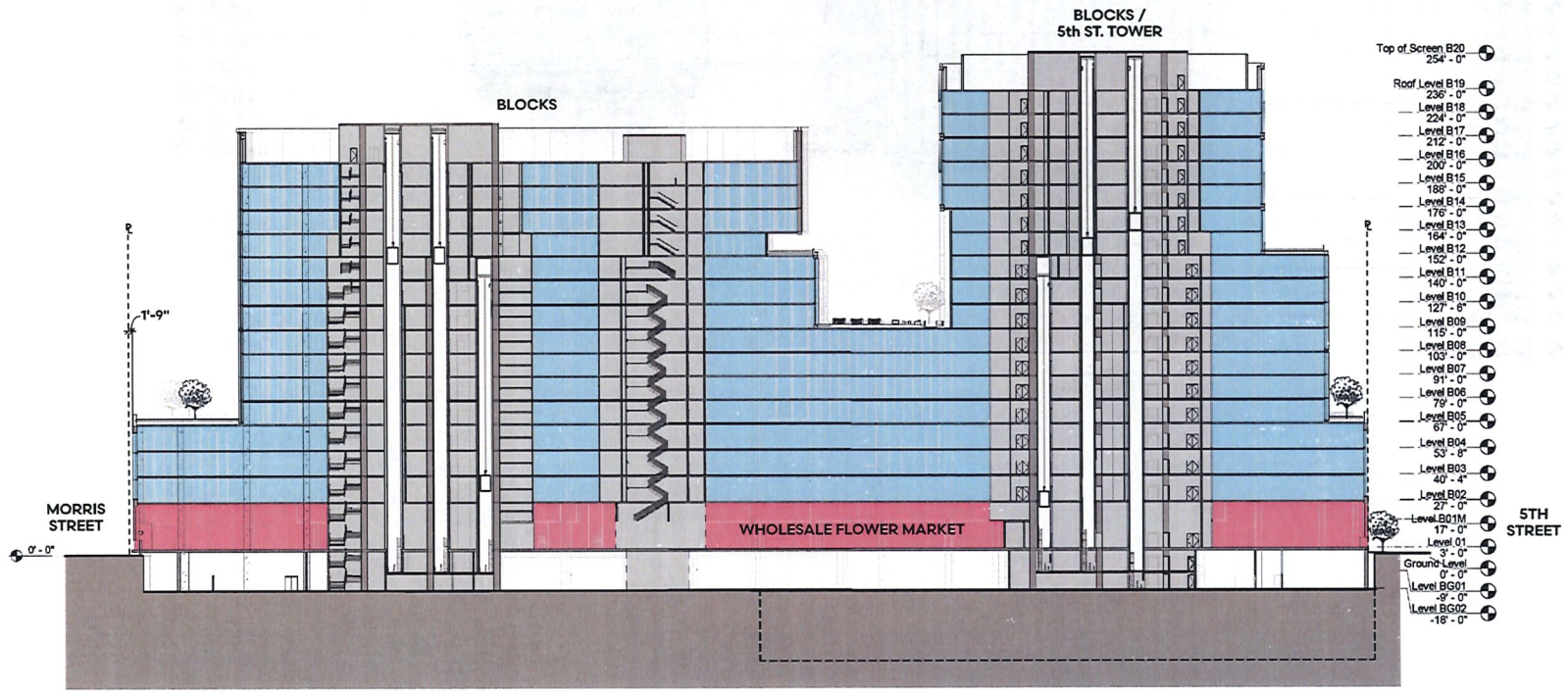
SF FLOWER MART 190610 44

LEGEND

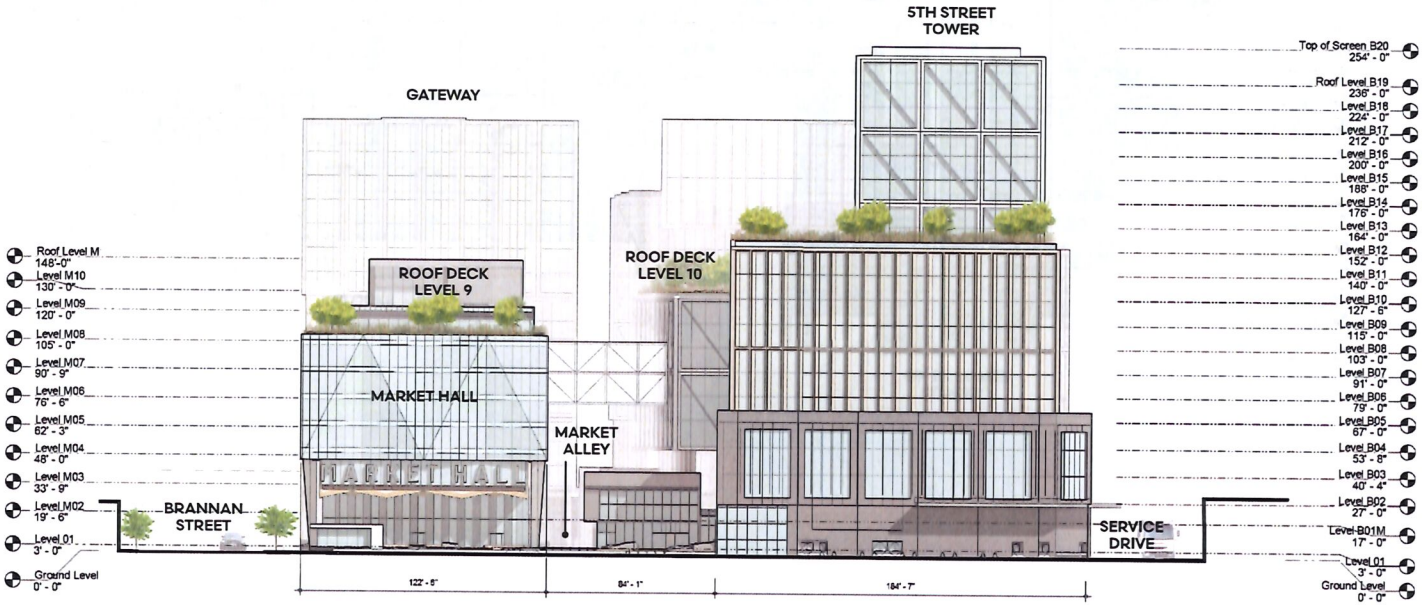
- Office
- Retail
- Core
- Lobby
- Wholesale Flower Market
- Food Hall



EAST-WEST SECTION THROUGH BLOCKS

1" = 60'-0"

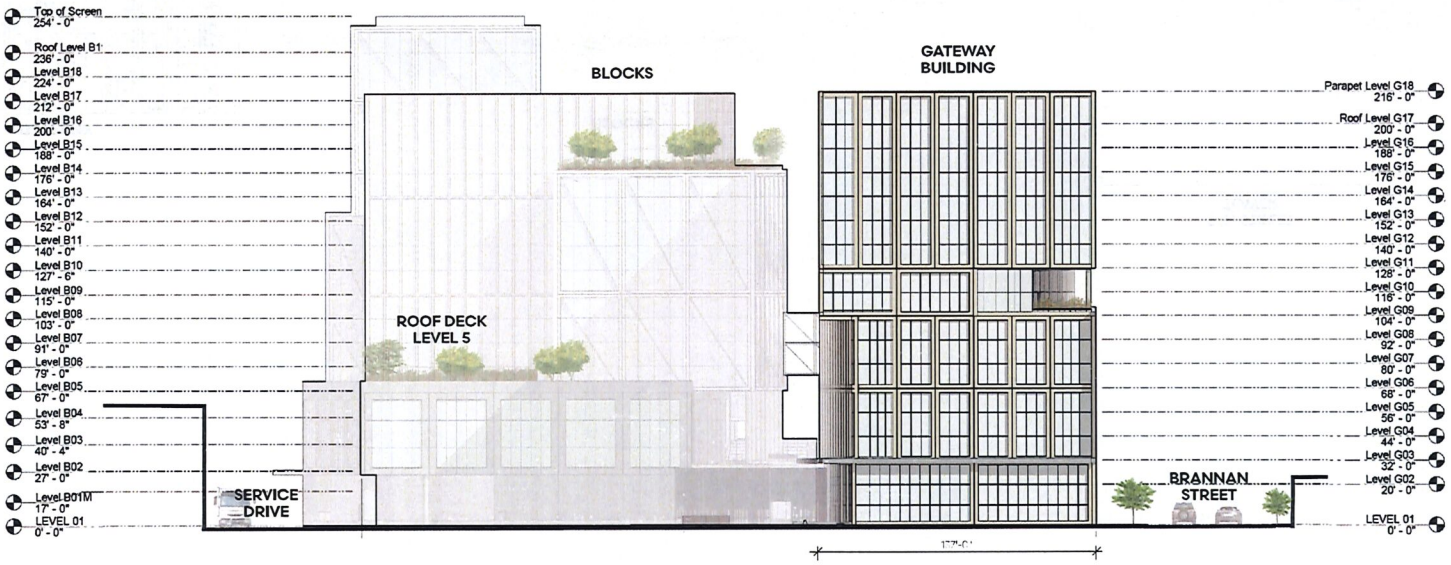
KILROY



EAST ELEVATION AT 5TH STREET

1" = 60'-0"

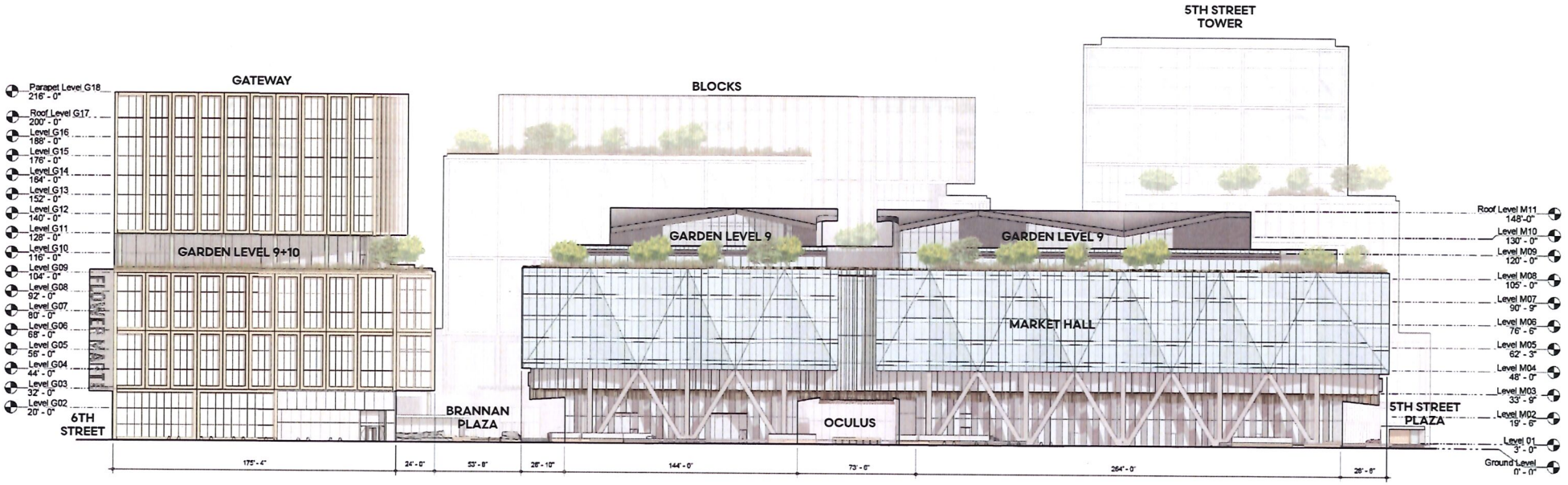
KILROY



WEST ELEVATION AT 6TH STREET

1" = 40'-0"

KILROY



SOUTH ELEVATION AT BRANNAN STREET

1" = 60'-0"

KILROY

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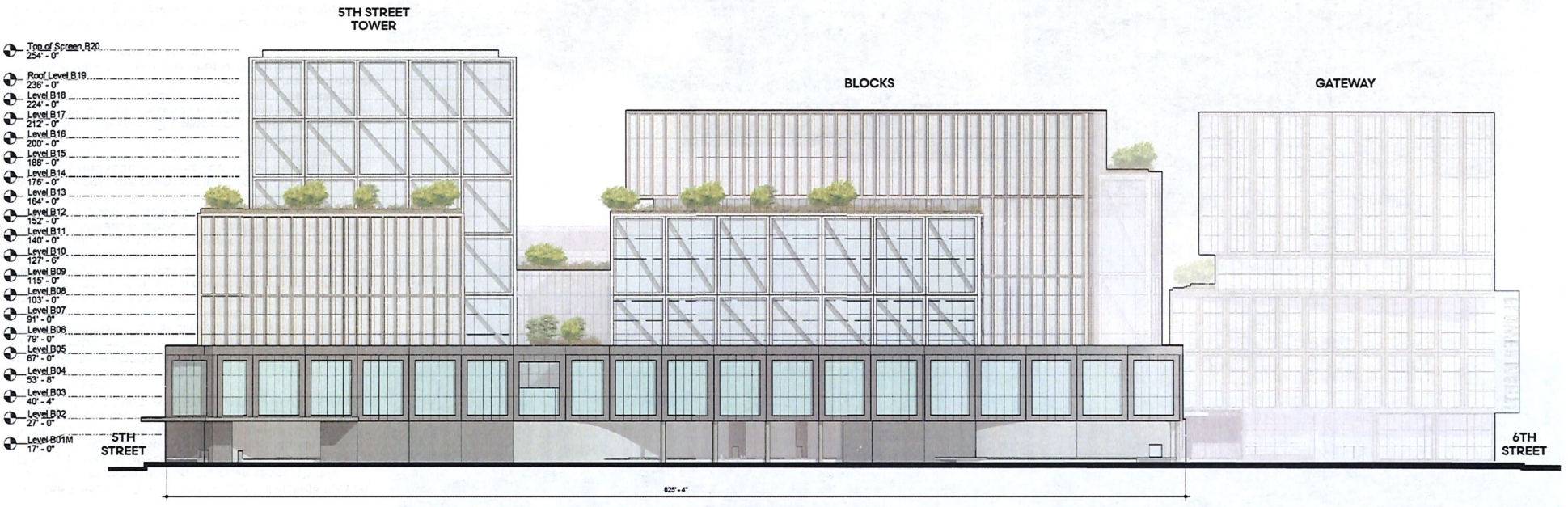
SF FLOWER MART 190610 48



NORTH ELEVATION AT PRIVATE DRIVEWAY

1" = 60'-0"

DESIGN NARRATIVE

The San Francisco Flower Mart Project will include 145,000 square feet of public and private open space. Of this, 31,450 square feet of POPOS is to be provided at street level including 8,125 square feet under the Market Hall Building's cantilevered ends. An additional 5,200 square feet will be provided off site. The remaining open space would include 36,000 square feet of living roof and multiple tenant terraces.

The street level POPOS has been designed as a diverse and activated network of public plazas and passages. The intent is to create a series of distinct places throughout the site while relating it to the neighborhood fabric and to the site programs. The paving pattern will operate on two scales: a high-level modified chevron design and a looser and more granular human scale patterning of varying unit paver materials and colored tiles. The paving concept is derived from the patchwork of paving types that make up SoMa's streets, overlaid with a dusting of flower petals so frequently seen scattered around the ground at the current Wholesale Flower Market. Fixed seating and planting areas have been carefully planned to define gathering and seating spaces both within the plazas and along the street frontages, to both engage the urban fabric and create comfortable, easily accessible open spaces within the site. The plazas are flexibly designed to provide for special weekend programming such as farmers markets, concerts, and community events. The project sponsor is working with selected artists and art consultants to plan a robust art program that will be integrated throughout the street level public spaces.

Roof terraces are planned across all three of the Project's buildings. These terraces will include 36,000 sf of living roofs that will double as part of the storm water management system. The remaining terrace spaces will include occupiable roof decks to be fit out by future tenants.

OVERALL RENDERING VIEW & DESIGN NARRATIVE

Scale: NOT TO SCALE

OVERALL LANDSCAPE SITE PLAN

Scale: 1" = 80'-0"

KILROY

North

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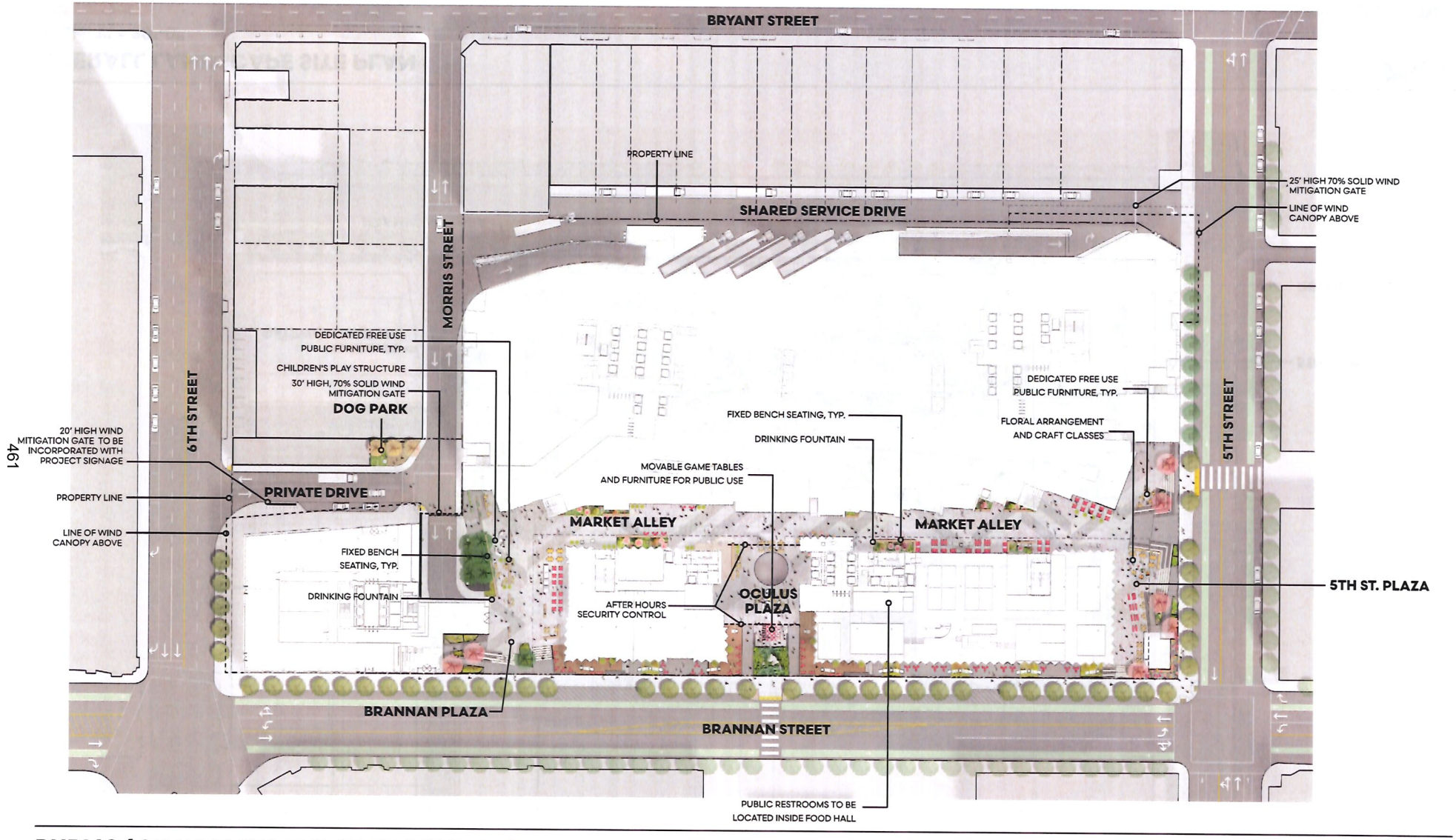

PUBLIC/ SHARED SPACES AT GROUND FLOOR

Scale: 1" = 80'-0"

North

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Project Gross Floor Area

LEVEL	OFFICE				OFFICE SUBTOTAL	WHOLESALE FLOWER MARKET	RETAIL	BASEMENT OFFICE	TOTAL
		BLOCKS BUILDING							
	MARKET HALL	BRANNAN MIDRISE	5TH ST TOWER	GATEWAY					BY FLOOR
	gfa	gfa	gfa	gfa	gfa	gfa	gfa	gfa	gsf
B4									0
B3									0
B2							8,020	4,033	12,053
B1								2,609	2,609
1	3,577	5,394	5,916	4,332	19,219	97,953	48,385		165,557
1 (MEZZANINE)		6,894			6,894	15,083			21,977
2	3,548	111,991		19,553	135,092		18,650		153,742
3	50,650	110,164		23,417	184,231				184,231
4	59,065	118,946		23,417	201,428				201,428
5	59,786	106,567		23,417	189,770				189,770
6	60,049	106,567		23,417	190,033				190,033
7	59,984	106,567		23,417	189,968				189,968
8	39,803	106,567		23,417	169,787				169,787
9 / MH PH	15,433	101,030		17,899	134,362		8,404		142,766
10		58,004	28,721	17,899	104,624				104,624
11		57,241	27,909	20,787	105,937				105,937
12		49,801	13,823	20,787	84,411				84,411
13		53,402	13,972	20,787	88,161				88,161
14		44,320	14,121	20,787	79,228				79,228
15		44,320	14,121	20,787	79,228				79,228
16			14,121	20,787	34,908				34,908
17			14,121		14,121				14,121
18			14,121		14,121				14,121
Program Total	**351,895**	**1,187,775**	**160,946**	**324,907**	**2,025,523**	**113,036**	**83,459**	**6,642**	**2,228,660**

AREA BY PROGRAM

	gfa
OFFICE (INCLUDES BASEMENT)	2,032,165
RETAIL	83,459
WHOLESALE FLOWER MARKET	113,036
PROJECT TOTAL	**2,228,660**

Project Occupiable Floor Area

	OFFICE				OFFICE SUBTOTAL	WHOLESALE FLOWER MARKET	RETAIL	BASEMENT OFFICE	TOTAL
		BLOCKS BUILDING							
LEVEL	MARKET HALL	BRANNAN MIDRISE	5TH ST TOWER	GATEWAY					BY FLOOR
	ofa	ofa	ofa	ofa	ofa	ofa	ofa	ofa	ofa
B4									0
B3									0
B2								4,033	4,033
B1								2,609	2,609
1	3,540	4,549	5,775	4,264	18,128	96,786	31,450		146,364
1 (MEZZANINE)		6,894			6,894	15,083			21,977
2	3,548	109,046		18,190	130,784		12,122		142,906
3	48,541	107,275		22,011	177,827				177,827
4	57,332	116,073		22,011	195,416				195,416
5	58,053	103,694		22,011	183,758				183,758
6	58,316	103,694		22,011	184,021				184,021
7	58,250	103,694		22,011	183,955				183,955
8	38,070	103,694		22,011	163,775				163,775
9 / MH PH	14,252	98,152		16,993	129,397		5,463		134,860
10		56,138	27,854	16,993	100,985				100,985
11		55,445	27,064	21,205	103,714				103,714
12		47,944	13,211	21,205	82,360				82,360
13		51,774	13,359	21,205	86,338				86,338
14		42,463	13,508	21,205	77,176				77,176
15		42,463	13,508	21,205	77,176				77,176
16			13,508	21,205	34,713				34,713
17			13,508		13,508				13,508
18			13,508		13,508				13,508
Program Total	**339,902**	**1,152,922**	**154,803**	**315,736**	**1,963,433**	**111,869**	**49,035**	**6,642**	**2,130,979**

AREA BY PROGRAM

	ofa
OFFICE (INCLUDES BASEMENT)	1,970,075
RETAIL	49,035
WHOLESALE FLOWER MARKET	111,865
PROJECT TOTAL	**2,130,979**

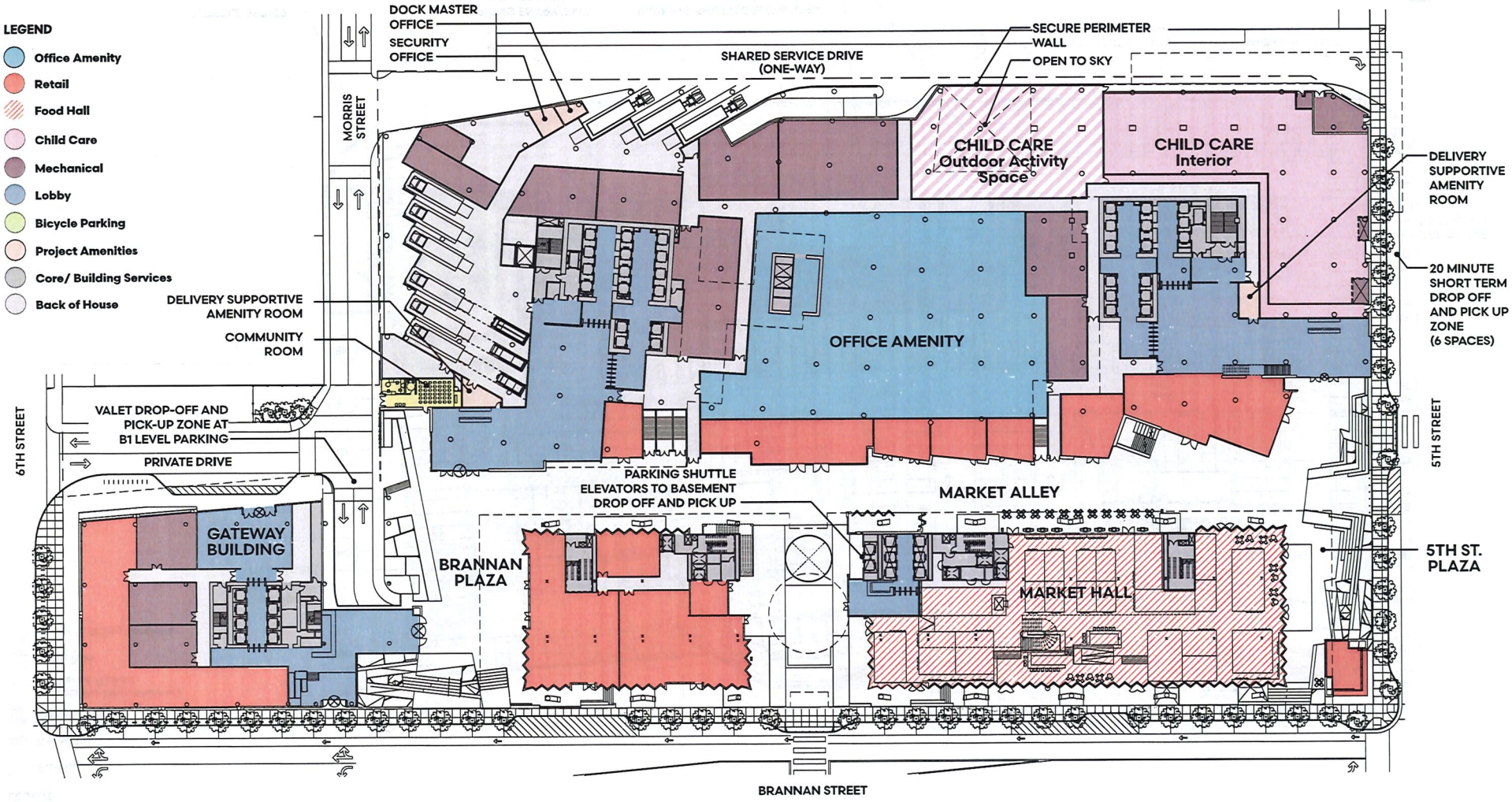
EXHIBIT B.2

Project Variant Description

Project Variant
without Wholesale Flower Market

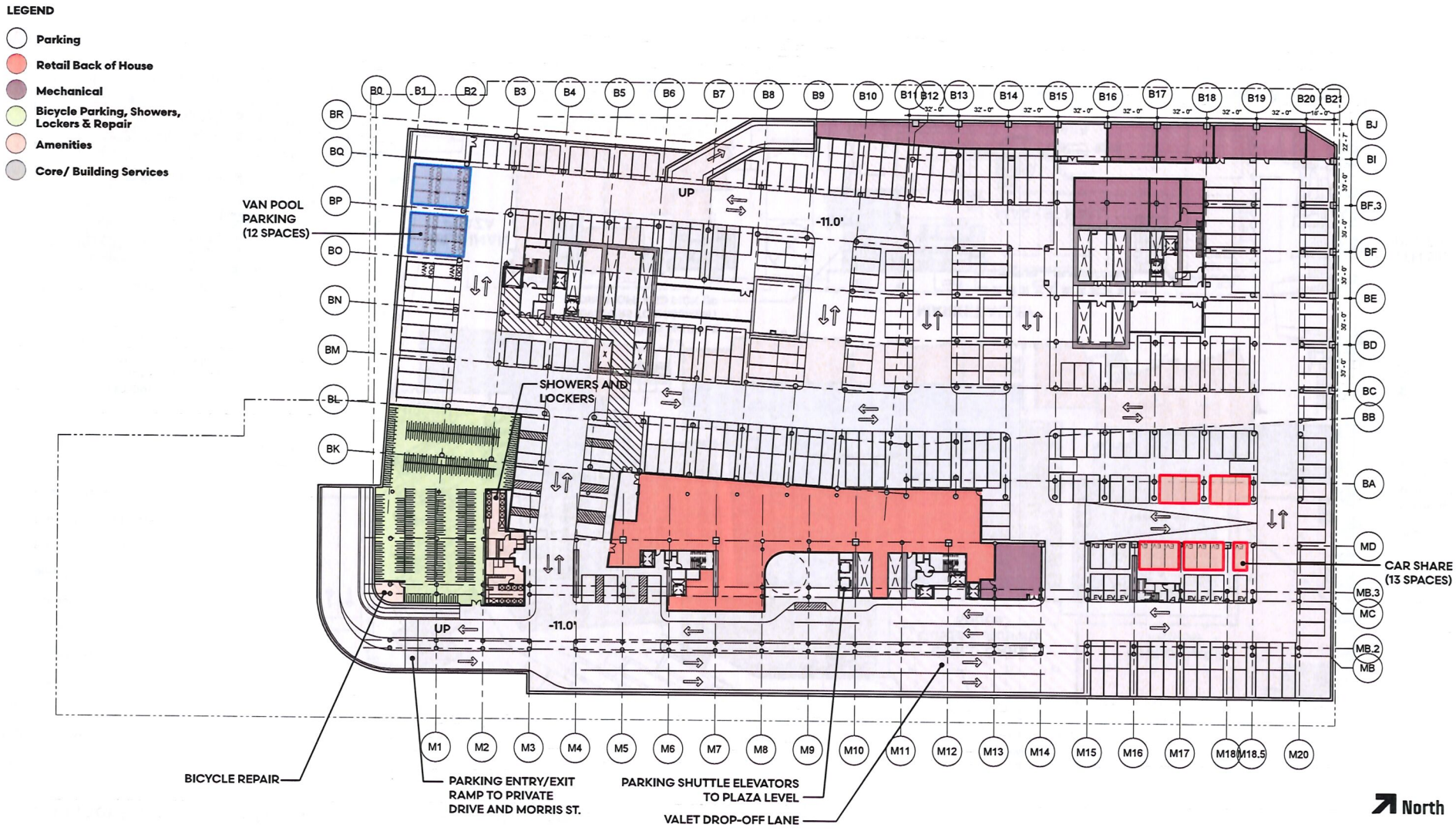
PROJECT VARIANT: WITHOUT WHOLESALE FLOWER MARKET

Ground Floor Plan - Blocks Building Ground Floor Alternative



PROJECT VARIANT: WITHOUT WHOLESALE FLOWER MARKET

B1 Level Basement - Car Share, Vanpool Parking Locations



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PROJECT VARIANT: WITHOUT WHOLESALE FLOWER MARKET

Project Features

VEHICLE PARKING
Per Zoning Code

1. Permitted Parking

Program	gfa	ofa		Spaces
Retail	90,976	53,920	1:1500 gfa	61
Office	2,061,380	1,997,829	1:3500 ofa	571
		Subtotal		632

3. Car Share

632	1:50	13
	Subtotal	13

Total Auto Parking Spaces Provided **645**

4. Off-Street Loading Spaces Required

Program	gsf	ofa	Loading Spaces
Retail	90,976	53,920	2
Office	2,061,380	1,997,829	20
		Total	22

5. Off-Street Loading Spaces Provided

B-01 Basement	Service	8.5' x 20'	26
At-grade	Freight Loading	12' x 50'	3
	Freight	12' x 36'	3
	Freight (Trash)	12' x 56'	3
	Total Service		26
	Total Freight		9

BICYCLE PARKING
Required by Zoning Code

6. Class 1

			Spaces
Office	1,997,829 ofa	1:5000 ofa	400
Retail	29,646 ofa	1:7,500 ofa	4
Eating	24,274 ofa	1:7,500 ofa	3
Child care	22,690 sf	1:20 children	6
		Subtotal	413
		Total (125%)	**516**

7. Class 2

			Spaces
Office	1,997,829 ofa	2 + 1:50,000 over 5,000	42
Retail	29,646 ofa	1:2,500 ofa	12
Eating	24,274 ofa	1:750 ofa	32
Child care	22,690 sf	1:20 children	6
		Subtotal	**92**

8. Showers & Lockers

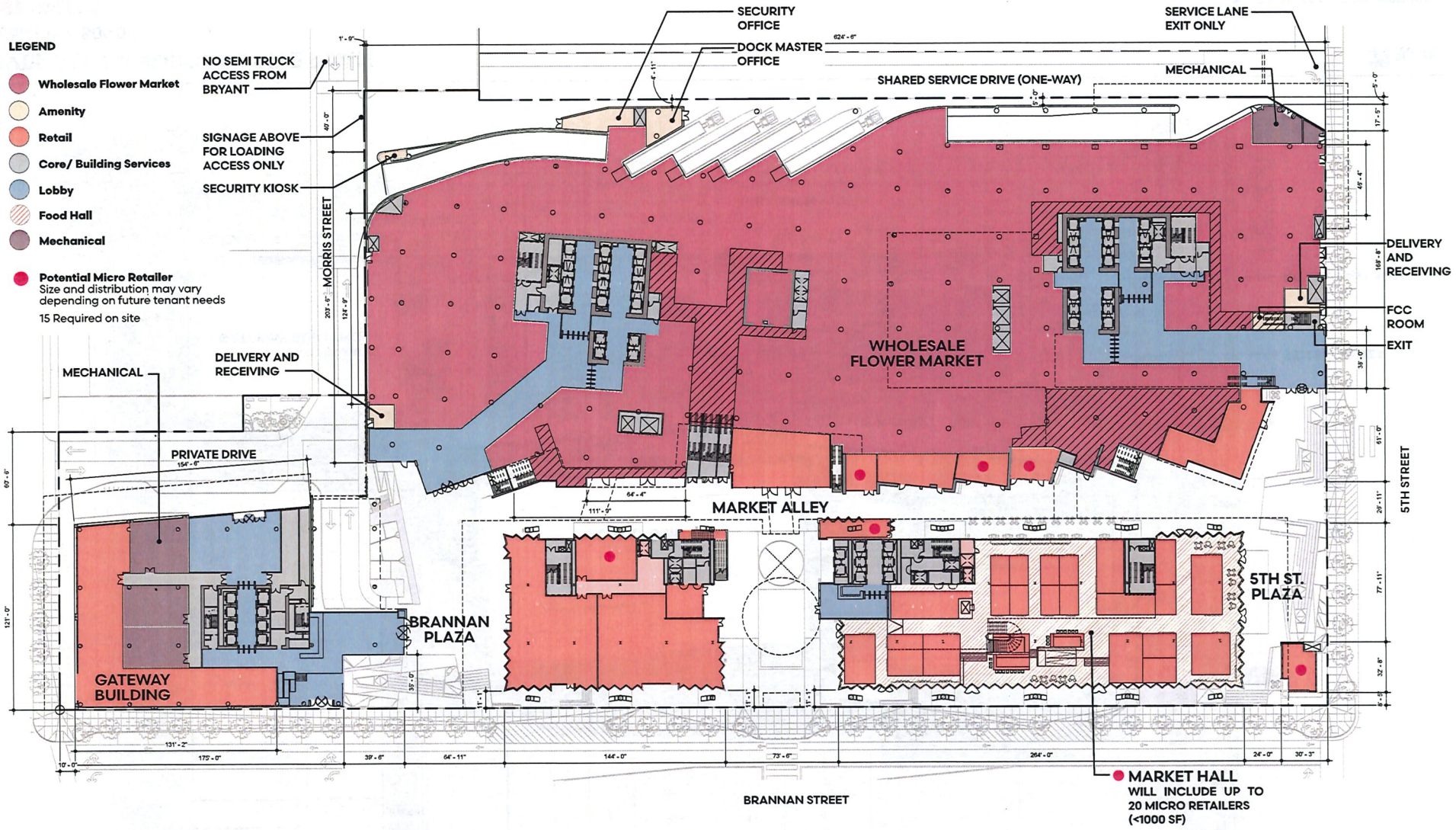
Per TDM Active-3		Qty.
Showers	1:30 Class 1 Spaces	**18**
Lockers	6:30 Class 1 Spaces	**103**

RETAIL GROSS FLOOR AREA
Areas by Type

Basement Retail						
		Retail	**Quality Restaurant**	**Restaurant**	**Café**	**SF**
B-02		8,020				8,020
	Total	**8,020**	**0**	**0**	**0**	**8,020**
Market Hall Retail						
		Retail	**Quality Restaurant**	**Restaurant**	**Café**	**SF**
Ground Floor		4,860	8,478		20,511	33,849
2nd Floor		12,162		6,488		18,650
Market Hall Penthouse			8,404			8,404
	Total	**17,022**	**16,882**	**6,488**	**20,511**	**60,903**
Blocks Retail						
		Retail	**Quality Restaurant**	**Restaurant**	**Café**	**SF**
Ground Floor		9,928		3,967	1,665	15,560
	Total	**9,928**	**0**	**3,967**	**1,665**	**15,560**
Gateway Retail						
		Retail	**Quality Restaurant**	**Restaurant**	**Café**	**SF**
Ground Floor		6,493				6,493
	Total	**6,493**	**0**	**0**	**0**	**6,493**
Total Project Retail GFA		**41,463**	**16,882**	**10,455**	**22,176**	**90,976**

EXHIBIT C.1

Project Site Plan



GROUND FLOOR PLAN

1" = 60'-0"

North

KILROY

adamson | RCH STUDIOS

OVERALL LANDSCAPE SITE PLAN

Scale: 1" = 80'-0"

North

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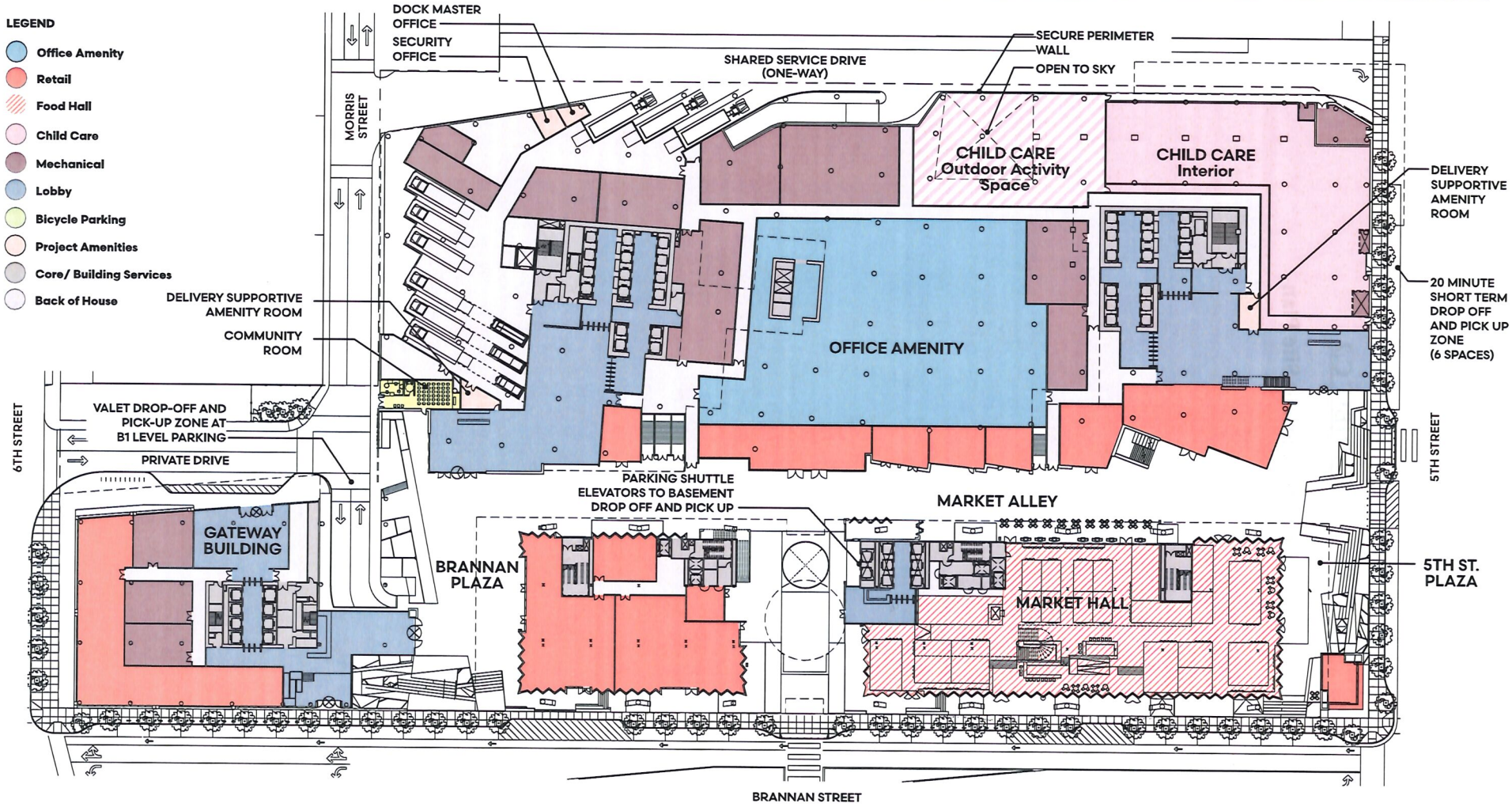
EXHIBIT C.2

Project Variant Site Plan

PROJECT VARIANT: WITHOUT WHOLESALE FLOWER MARKET

Ground Floor Plan - Blocks Building Ground Floor Alternative



KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

SF FLOWER MART 190610 115

EXHIBIT D

Rent Schedule and Key Tri-Party Agreement Commitments

Rent Schedule:

Lease Years 1-4. Annual Base Rent of $250,000/year.

Lease Years 5–Last; Increases in Base Rent. On the first day of Lease Year 5, the Base Rent shall be adjusted to the amount that Base Rent would have been (calculated as if the same been adjusted on the first day of Lease Years 2, 3, 4 and 5 pursuant to the annual CPI Adjustment procedure set forth in this Section 3.2 hereinbelow, inclusive of the 1% - 4% collar mechanism), had the Base Rent for Lease Year 1 been the sum of (x) a Monthly Rental Rate per Rentable Square Foot of $1.35, and (y) the actual rentable square footage of the Premises as determined pursuant to Section 1.2 of this Lease, above. On the first day of Lease Year 6 and the commencement date of each subsequent Lease Year thereafter occurring during the Lease Term (the "**CPI Adjustment Date**"), the Base Rent shall be adjusted (a "**CPI Adjustment**") to equal the product of (i) the Base Rent, as previously adjusted and in effect as of the applicable CPI Adjustment Date, and (ii) a fraction, the numerator of which is the Adjustment Month Index, as that term is defined below, occurring prior to such CPI Adjustment Date, and the denominator of which is either (x) for the first adjustment during the Lease Term, the Base Month Index, and (y) for all subsequent adjustments, the Adjustment Month Index used as the numerator for the prior year's adjustment; provided, however, that in no event shall the applicable CPI Adjustment result in the adjusted Base Rent being less than one percent (1%) higher or more than four (4%) higher than the Base Rent then in effect, as previously adjusted. For purposes of this Section 3.2, (a) "**Base Month Index**" shall be the "Index," as that term is defined below, for the month which is three (3) months prior to the month in which the first Lease Commencement Date occurs; (b) "**Adjustment Month Index**" shall be the Index for the same month as the Base Month Index in each succeeding calendar year; and (c) "**Index**" means the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area (base year 1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics. If the base of the Index changes from the 1982-84 base (100), the Index shall, thereafter, be adjusted to the 1982-84 base 100 before the computation indicated above is made. If the Index cannot be converted to the 1982-84 base or if the Index is otherwise revised, the adjustment under this Section 3.2 shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics. If the Index is at any time no longer published, a comparable index generally accepted and employed by the real estate profession, as determined by Landlord in Landlord's reasonable discretion, shall be used.

Tri-Party Agreement Context:
The following provides a summary of the key commitments in the Tri-Party Agreement. This summary is not intended and is not to be construed as altering the terms in the Tri-Party Agreement in any manner whatsoever. To the extent a conflict exists between this Summary and the Tri-Party Agreement, the Tri-Party Agreement shall prevail.

Parties: 1) Developer (i.e. KR Flower Mart, LLC)
2) Tenant Association (i.e. San Francisco Flower Market Tenants' Association)
3) San Francisco Flower Mart LLC

Key Commitments:

- Developer shall construct a new wholesale flower market and relocate the occupants thereto at Developer's sole cost, and provide interior improvements at Developer's sole cost if the Permanent Off-Site Option is exercised or provide an improvement allowance for such interior improvements if the Stay Option is exercised, with Developer further funding certain project management costs to be incurred by San Francisco Flower Mart LLC in connection with the design and construction of such interior improvements.
- Developer to reimburse San Francisco Flower Mart LLC for certain legal fee expenses incurred by San Francisco Flower Mart LLC with regard to the negotiation of the Tri-Party Agreement and master leases.
- Developer shall provide to subtenants, via a rent credit to San Francisco Flower Mart LLC (which in turn shall be provided as a credit to subtenants), a gross rent subsidy of $0.339 per rentable square foot per month throughout the first 15 years of the term of the Post-Development Master Lease or the Permanent Off-Site Master Lease, as applicable.
- In the event of a default-based termination of the Pre-Development Master Lease, the Post-Development Master Lease or the Permanent Off-Site Master Lease, as the case may be, Developer is obligated to recognize subtenants during the otherwise existing term of such master leases, to the extent the corresponding subleases are on the pre-approved form of sublease and exceed the sublease rent floor specified in such master leases.

EXH. D

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:
City and County of San Francisco
Mayor's Office of Economic and Workforce Development
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: _____

----------Space Above This Line for Recorder's Use----------

_____
San Francisco, CA _____
Assessor's Lot ___, Block ____

DECLARATION OF RESTRICTIONS
_____ *[street address]*

THIS DECLARATION OF RESTRICTIONS ("**Declaration**") is made as of _____, 20__, by _____, a _____ ("**Owner**"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO** (the "**City**").

RECITALS

A. Owner owns certain real property described in **Exhibit A** attached hereto (the "**Property**") and leases the Property to Master Tenant pursuant to the Master Lease (defined below) for use as a wholesale and retail market for flowers, plants, other horticultural and floricultural uses, and other ancillary related items, such as the sale of flower decorations and flower hardware (e.g., vases, pots, foam, etc.), operation of a café facility for use by occupants and visitors to the Property, and space for management offices and related storage relating to the foregoing uses (the "**Project**"). City and KR Flower Mart LLC, a Delaware limited liability company ("**Developer**"), are parties to that certain Development Agreement recorded as Instrument No. _____, San Francisco Official Records (the "**Development Agreement**").

B. The Development Agreement provides, among other Community Benefits, for the Developer to cause the construction of the Project and the leasing of the Project to the Master Tenant pursuant to the Master Lease in order to provide a viable wholesale flower market creating and preserving employment and supporting the City's convention, tourist and events businesses.

C. In consideration of the common beneficial ownership of Developer and Owner, and as required of Developer under the Development Agreement, Owner has agreed to comply with certain affordability and use and occupancy restrictions (collectively, the "**Regulatory Obligations**"), commencing on the Lease Commencement Date (as defined in the Master Lease) and continuing for as long as the Master Lease or any Subleases are in effect, (the "**Compliance Term**"). Owner's covenants and agreements described in this Declaration are a material part of the consideration for the City's entering into the Development Agreement, and without Owner's agreement to subject the Property to the Regulatory Obligations, the City would be unwilling to enter into the Development Agreement with Developer.

AGREEMENT

Now, therefore, in consideration of the City's agreement to the terms of the Development Agreement, Owner agrees as follows:

1. Definitions. Any capitalized terms in this Declaration that are not defined herein shall have the meaning set forth in the Development Agreement. In the event of any conflict between the terms of this Declaration and the terms of the Development Agreement, the terms of the Development Agreement (including the following defined terms) shall control unless otherwise expressly stated. As used in this Declaration, the following words and phrases have the following meanings:

(a) "**Compliance Term**" has the meaning set forth in Recital C.

(b) "**Master Lease**" has the meaning given to "Permanent Off-Site Master Lease" in the Development Agreement.

(b) "**Master Tenant**" means the tenant under the Master Lease, or its approved successor or assign.

(b) "**Qualified Tenant**" means Master Tenant and any subtenant of Master Tenant pursuant to a "Deemed Consent Sublease" (as defined in the Master Lease).

(c) "**Rent**" means all sums charged to Master Tenant as rent pursuant to the Master Lease and in accordance with the Development Agreement and this Declaration.

(d) "**Sublease**" means a sublease to a Qualified Tenant in accordance with the Master Lease.

2. Regulatory Obligations. Owner and its successors and assigns must comply with the Regulatory Obligations through the expiration of the Compliance Term, regardless of any conveyance of any interest in the Property.

3. Affordability and Restrictions.

(a) Restrictions. The premises leased pursuant to the Master Lease may be occupied only by Qualified Tenants. In no event shall the Master Tenant be required to pay Rent in excess of that which is specified in Exhibit D of the Development Agreement and attached hereto. In the event that the Master Lease terminates, Owner shall recognize the Qualified Tenants' rights to continue to occupy the portion of the Project which is the subject of their respective Subleases pursuant to the Master Lease, and in no event shall any Qualified Tenant be required to pay Rent in excess of that which is specified in its Sublease.

(b) Excess Rent. If the Master Lease terminates and Owner charges rent to a Qualified Subtenant in excess of the Rent set forth in the Qualified Tenant's Sublease, Owner shall refund any such excess received to the Qualified Tenant who was overcharged on demand, together with interest at the rate of ten percent (10%) per annum, and Owner's action in collecting or attempting to collect such excess rent will constitute an Event of Default pursuant to the Development Agreement.

6. Nondiscrimination. Owner agrees not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law.

7. Enforcement.

(a) Owner shall provide the City with any records and information relating to the Master Lease, the Project and its contstruction and operations, including without limitation in a timely manner, including without limitation information customarily requested by the City's Assessor pursuant to California Revenue & Taxation Code, Sections 71, 441, and 470 and including the right to audit revenues and expenditures relating to the Project.

(b) The City, in its sole discretion, may exercise any rights available at equity or in law, including without limitation institution of an action for specific performance, in the event that Owner fails to comply with the Regulatory Obligations to the City's satisfaction within thirty (30) days of Owner's receipt of notice from the City to so comply. Owner shall pay the City's costs in connection with the City's enforcement of the terms of this Declaration, including, without limitation, the City's attorneys' fees and costs. Owner shall include a requirement of compliance with this Declaration in all lease and occupancy agreements relating to the Project, including the requirement to provide information to the City upon request to confirm compliance with this Declaration.

8. Governing Law. This Declaration shall be governed and construed in accordance with the laws of the State of California.

9. Notices. Before exercising any remedy, the City shall give Owner and the Developer written notice of the breach and a period of not less than ten (10) business days to cure the breach (the "**Cure Period**"). Any notice hereunder shall be in writing and delivered personally or by registered mail, return receipt requested or by nationally-recognized overnight courier. Notice, whether given by personal delivery, registered mail or overnight

courier, shall be deemed to have been given and received upon the actual receipt, at the address set forth below (or any updated address provided by notice from time to time).

To City:

City and County of San Francisco
Mayor's Office of Economic and Workforce Development
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Owner:

_____
_____
_____
Attention: _____

To Developer:

Kilroy Realty Corporation
12200 West Olympic Boulevard, Suite 200
Los Angeles, California 90064
Attention: Legal Department

with copy to:

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, California 94105
Attention: Regional Vice-President, San Francisco

10. No Waiver. No failure by the City to insist upon the strict or timely performance of any provision of this Declaration, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the City's right to demand strict compliance in the future. No waiver of any term shall be effective unless made in writing, and no such waiver shall be implied from any act or omission. One or more written waivers shall not be deemed to be a waiver of any subsequent condition, action or inaction. Nothing in this Declaration shall limit or waive any other right or remedy to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

11. No Subordination; Covenants Run with the Land. This Declaration shall unconditionally be and at all times remain a lien or charge on the Property prior and superior to the lien of any mortgage, deed of trust, or other security instrument. This Declaration and the Regulatory Obligations constitute covenants running with the land and bind successors and assigns of Owner.

Owner has executed this Declaration as of the date first written above.

_____,
a _____

By: _____,
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT A

Legal Description of the Property

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

Assessor's Lot ___; Block ____

Street Address:

_____
San Francisco, CA _____

MASTER LEASE EXHIBIT D

Rent Schedule

Master Lease Rent Schedule:

Lease Years 1-4. Annual Base Rent of $250,000/year.

Lease Years 5–Last; Increases in Base Rent. On the first day of Lease Year 5, the Base Rent shall be adjusted to the amount that the Base Rent would have been (calculated as if the same had been adjusted on the first day of Lease Years 2, 3, 4 and 5 pursuant to the annual CPI Adjustment procedure set forth in this Section 3.2 hereinbelow, but not less than 1% nor more than 4% per annum), had the Base Rent for Lease Year 1 been the product of (x) a Monthly Rental Rate per Rentable Square Foot of $1.35, and (y) the actual rentable square footage of the Premises as determined pursuant to Section 1.2 of this Lease, above. On the first day of Lease Year 6 and the commencement date of each subsequent Lease Year thereafter occurring during the Lease Term (the "**CPI Adjustment Date**"), the Base Rent shall be adjusted (a "**CPI Adjustment**") to equal the product of (i) the Base Rent, as previously adjusted and in effect as of the applicable CPI Adjustment Date, and (ii) a fraction, the numerator of which is the Adjustment Month Index, as that term is defined below, occurring prior to such CPI Adjustment Date, and the denominator of which is either (x) for the first adjustment during the Lease Term, the Base Month Index, and (y) for all subsequent adjustments, the Adjustment Month Index used as the numerator for the prior year's adjustment; provided, however, that in no event shall the applicable CPI Adjustment result in the adjusted Base Rent being less than one percent (1%) higher or more than four (4%) higher than the Base Rent then in effect, as previously adjusted. For purposes of this Section 3.2,
(a) "**Base Month Index**" shall be the "Index," as that term is defined below, for the month which is three (3) months prior to the month in which the first Lease Commencement Date occurs;
(b) "**Adjustment Month Index**" shall be the Index for the same month as the Base Month Index in each succeeding calendar year; and (c) "**Index**" means the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-San Jose area (base year 1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics. If the base of the Index changes from the 1982-84 base (100), the Index shall, thereafter, be adjusted to the 1982-84 base 100 before the computation indicated above is made. If the Index cannot be converted to the 1982-84 base or if the Index is otherwise revised, the adjustment under this Section 3.2 shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics. If the Index is at any time no longer published, a comparable index generally accepted and employed by the real estate profession, as determined by Landlord in Landlord's reasonable discretion, shall be used.

EXHIBIT E

Requirements Of Temporary Facility

In addition to the requirements under Section 3.1 of the Agreement, the Temporary Facility shall accommodate the Existing Subtenants' and Pre-Development Subtenants' continued operation, without material interruption, of their businesses in accordance with the Continued Operation Standard (per the Tri-Party Agreement), including an equivalent amount of private and shared or common refrigeration as is currently available in the Existing Flower Market. The Temporary Site shall be a site which is Viable and shall have a total gross warehouse area of no less than 115,000 square feet or a lower amount of square footage that is still sufficient to accommodate all of the Existing Subtenants and Pre-Development Subtenant, unless otherwise agreed by the City and the Tenants Association.

If the Temporary Site will be 2000 Marin Street, the Temporary Facility is anticipated to be consistent with the conceptual drawings prepared by Jackson Liles Architecture, dated as of May 31, 2018, and included as basis for the CEQA analysis and the Certificate of Determination for Community Plan Evaluation and Addendum, issued by the City on July 3, 2019.

Exhibit F-1

Permanent Off-Site Facility Design and Specifications (including Renovation of existing buildings)

The Specification herein shall cover the construction of a turn-key Permanent Off-Site Facility for the New Wholesale Flower Market. The Permanent Off-Site Facility may be located (i) on an independent site, (ii) within a light industrial building or campus of buildings as a sole user, or (iii) within a light industrial multi-user building or campus of buildings. The quality of the Permanent Off-Site Facility shall be consistent with other comparable PDR or light industrial facilities located in the City of San Francisco or other settings that accommodate users and customers for the wholesale (and retail) floral business or similar uses, and with the description in this Exhibit. The Permanent Off-Site Facility shall include either: (i) renovation and reuse of existing building(s), (ii) new constructed infill building(s) and/or components, or (iii) a combination of the above.

The design of the Permanent Off-Site Facility shall be consistent with the criteria and parameters set forth in this Exhibit and shall be developed in detail pursuant to the process described in the master lease between Developer and the master tenant of the Permanent Off-Site Facility.

I. Summary Programmatic Parameters

1. The Permanent Off-Site Facility shall have a total gross warehouse area designed for use by flower vendor tenants of 115,000 gross square feet ("gsf"), provided, however, that if the Permanent Off-Site Facility is located within a multi-user complex, then only that portion of the building(s) designed for New Wholesale Flower Market use shall be 115,000 gsf (i.e., the total size of the multi-user facility may be greater than 115,000 gsf). The whole of the 115,000 gsf shall attempt to have a minimum clear height of twenty feet (20'-0") unless otherwise agreed to. In some cases, as contemplated in Exhibits C-1 and C-2 of the TPA, SFFM has agreed to certain conditions that would allow for less than 20'0" clear height to be acceptable for the Permanent Off-Site Facility.

2. The Permanent Off-Site Facility shall have a customer parking and loading area that is sufficient for the movement and parking of 150 standard vehicles (standard vehicles include full sized pick-up trucks and light commercial vehicles [e.g. cargo vans]) and up to 25 medium duty box trucks in a secured area. This customer parking and loading area shall include adequate space for the efficient and safe movement of vehicles, pedestrians, carts, and other industrial conveyance (e.g. forklifts, pallet jacks) for the safe loading and unloading of goods. If all or a portion of the vehicle related areas outlined above are provided via a structured parking garage, the structure shall be designed to provide free flowing areas with a high degree of visibility.

3. The Permanent Off-Site Facility shall have sufficient space to accommodate 4 semi-trucks (WB-67) in a large truck loading area or similarly acceptable loading area. This large truck loading area, or loading dock, shall include up to four loading docks and adequate truck circulation, turning, and parking areas as well as an internal product loading and unloading area (unloading area included as part of 115,000 gsf).

4. The Permanent Off-Site Facility shall be further subdivided into individual tenant or vendor stalls (the "Stalls"). There shall be up to 45 individual tenant stalls of varying sizes within the .Permanent Off-Site Facility. Each of these vendor stalls shall be delivered in a condition in which the Stall is fully functional for a tenant to begin business operations. The delivery of these Stalls shall include (but not be limited to): all fixed construction work, all finishes, and installation of Point of Service and existing Service and business process-related equipment and fixtures. Stalls shall be built and fitted out to provide the appropriate conditions for the varying tenant types, including, but not limited to, businesses focusing on the core areas of: Cut Flowers, Hard Goods, Green Plants & Tropical Plants, and Hybrids (businesses focusing on multiple core areas). To the extent commercially feasible, the design of the Permanent Off-Site Facility shall provide for flexibility to accommodate future changes and growth of floral and plant related businesses.

5. The Permanent Off-Site Facility shall contain other spaces as required to create the .Permanent Off-Site Facility. These shall include but are not limited to: Common Areas, Corridors and Hallways, Management and Operations Facilities, and a Floral Center.

II. Standard of Quality

The following outlines the key aspects of the standard of quality required for the design and construction of the Permanent Off-Site Facility.

1. A New Wholesale Flower Market in San Francisco will be a unique use within the context of PDR (light industrial) development, with few precedents within the United States to use as a basis of comparison. Given the limited number of precedents, it is understood that the Permanent Off-Site Facility will attempt to meet the following standards of development.

    a. The Permanent Off-Site Facility will be designed and constructed to create a fully functional Wholesale Flower Market, which requires convenient access for customers from their vehicles to the market area.

    b. The Permanent Off-Site Facility building design and construction, to the extent that it is new construction, shall meet the standard of design and construction (including applicable building materials) of the new project at 901 Rankin Street, as it was originally constructed. 901 Rankin Street is a single story (with mezzanine), sustainable, durable, and flexible light industrial project, completed in January 2015 in the Bayview neighborhood of San Francisco, and is referenced here as an example only. In particular, the mezzanine feature of 901 Rankin is not to be treated as an appropriate design element for the Permanent Facility, except as specifically identified jointly by the Developer and master tenant.

III. Potential Two-Level and or Multi-Structure Design.

The following outlines the key design considerations for a potential second level or multi-structure design and construction of the Permanent Off-Site Facility.

1. Similar to the design of the New Wholesale Flower Market, it is recognized that the parking and/or sales floor (warehouse) space may be located on two different levels or in multiple structures. Any design and construction of a two-level facility as the Permanent Off-Site Facility will present specific challenges. The challenges may include, but are not limited to:

    a. Moving floral related products between two levels or multiple buildings safely, efficiently, and with minimal impact to the product, workers, or customers.

    b. Providing customer access by car, van, and medium duty box truck to the sales floor, and connecting differing levels of parking and loading together in a safe and efficient manner.

    c. Ensuring a direct, durable, intuitive, and easily understandable design, connecting customers, visitors, vendors, and employees.

    d. Providing a safe and efficient functioning facility providing, to the extent commercially feasible, for all New Wholesale Flower Market operations free of bottlenecks or congestion within the context of a multi-use facility.

    e. If a two-level facility is necessary, the customer parking and the market sales floor (warehouse)shall be located on the same floor subject to maximum parking counts being achieved primarily on grade an ,to facilitate ease of customer access to and from the sales floor area.

    f. If a multi-building facility is necessary, the customer parking and the sales floor (warehouse) shall be located so as to facilitate ease of customer access to and from the sales floor (warehouse,) to the extent commercially feasible.

    g. If a multi-building facility is necessary, a semi-truck loading area shall be provided, if possible, for each major building, to the extent commercially feasible, so as to limit travel distance for delivery of product.

    h. If the components of the facility (e.g., sales floor and customer parking) are located in separate buildings or parcels, or the facility is a part of a larger multi-user light industrial complex, certain design elements may be necessary to unite the facility as a whole and to provide a functional facility with the proper flow and connections for customers. These features may include covered exterior walk ways, stairs, cart and/or vehicle ramps, and raised traffic tables. The type and number of these design elements shall be determined by the commercially feasible means of maximizing the flow of the Permanent Off-Site Facility and minimize travel distances.

    i. If the Permanent Off-Site Facility is located on separate parcels, which are separated by a public Right-of-Way (ROW), improvements must be provided to maximize the safety of all customers, workers, and visitors to the facility, subject to and conditioned on City approval for the said improvements. The possibility of vacating or closing the public ROW shall be fully explored by SFFM, KRC, and

OEWD. If the public ROW is not vacated or closed, KRC shall work in good faith with SFFM and the SFMTA, such that the design incorporates safety features, such as traffic calming improvements.

IV. Permanent Off-Site Facility Governmental Agency Requirements, Industry Standards, and Compliance

The design and construction of the Permanent Off-Site Facility shall be located in San Francisco, and thus shall be subject to all applicable San Francisco ordinances, and shall comply with all applicable regulations and governmental officials' interpretations thereof.

The City of San Francisco has numerous codes which require a level of compliance that is established by a variety of characteristics such as; project type (new construction or renovation) number of buildings or structures, building size, use, building type, etc. The Permanent Off-Site Facility shall comply with all applicable code requirements whether triggered by its own characteristics or the combined characteristics of the Permanent Off-Site Facility, and other elements of the same building or property. Once triggered, many of the above ordinances allow multiple routes to compliance In addition to compliance with the relevant ordinances, the following shall be included in the cost of the Project.

a. The cost of entitling the Permanent Off-Site Facility (e.g., CEQA review, Conditional Use and other governmental approvals, etc.), as required, shall be considered a Project Cost.
b. The cost of constructing the Permanent Off-Site Facility may include the cost of off-site improvements required by the City as a condition of approval of the entitlements for the Permanent Off-Site Facility.
c. The cost of construction is to include all work triggered to upgrade the building to accommodate the Permanent Off-Site Facility. This shall include all work related to changes in occupancy (e.g. seismic retrofit, fire walls, etc.).

V. Permanent Off-Site Facility Design

The following summarizes the components of the project to design and construct the Permanent Off-Site Facility (which includes both Base Building and Tenant Improvements). Due to the lack of a developed design, program, or site for these improvements, the below is a projection. It is the intent of the Developer and Master Tenant of the Permanent Off-Site Facility to create a fully functioning, safe, sustainable, resilient, fully functional New Wholesale Flower Market. As a facility open to the public, it is understood that the Permanent Off-Site Facility shall be welcoming and designed to function well from a customer perspective. All components of the following systems, whether explicitly identified or implied to support functioning of the Permanent Off-Site Facility, are to be a part of the Permanent Off-Site Facility as reasonably agreed by all parties.

A. General Conditions and Requirements

General conditions, general requirements, profit and overhead, contingency, insurance, and taxes are assumed to be a part of the construction of the Permanent Off-Site Facility.

B. Site Work

Site work is recognized to include both on-site and off-site work required for the successful construction of the Permanent Off-Site Facility.

1. Off-site

The Permanent Off-Site Facility shall include all improvements to the surrounding off-site physical infrastructure as required by the relevant Government Agencies. . The infrastructure upgrades may include, but are not limited to, the following items to the extent they are Project-related and required by City code:

a. Public right-of-way improvements on or immediately adjacent to the site, including demolition and grading, streets, curb and gutter, sidewalks, raised traffic tables, street trees and landscaping, stormwater components, street lighting, and streetscape accessories. Compliance with San Francisco's Better Streets Plan, if applicable, along with requirements of SFDPW and SFMTA.
b. Connections to the domestic water system including main water lines, laterals, all associated connections, trenching, and installation.
c. Connections to the combined sewer system, including main sewer lines, manholes, catch basins, other structures, laterals, and associated connections, trenching, and installation.
d. Connections to the water delivery system for fire suppression, including standard hydrant systems. These include: Connections for water systems to provide for adequate fire suppression within the building(s).
e. Connection of dry utilities, including but not limited to PG&E and voice/data systems.
f. Roadway or right-of-way improvements which might be identified during project review and approval by the Government Agencies, including streetscape upgrades, bus stop, or bike related upgrades (including potential relocation of bike lanes).
g. Handling and disposal of hazardous soils and other subsurface materials.

2. On-site

The Permanent Off-Site Facility, similar to other light industrial projects of this nature, may require on-site improvements. The improvements will seek to facilitate the safe, efficient, and effective transfer of goods and create an economically sustainable marketplace that is a healthy workplace environment and an engaging and visually compelling place to transact wholesale and/or retail floral business. The on-site work include the following on-site work to the extent it is Project-related and required by City code:

a. Grading - Rough and finish grading and site preparation
    i. Rough grading and export of excess soils
    ii. Import of required soils, gravel and sand
    iii. Working within and handling and disposal of hazardous soils or other subsurface materials.

iv. Working within, around or handling of archaeological or other historical or cultural artifacts including, but not limited to CEQA related processing (pre and post approvals)

b. Site paving must be durable and suitable for industrial traffic use. Concrete is an acceptable material.

c. Pedestrian facilities - Sidewalks, stairs, ramps, barriers and other pedestrian facilities to provide a safe walking environment. These elements may be provided per the following:
   i. Sidewalks and stairs shall provided per City code for industrial buildings.
   ii. Accessible ramps shall be provided per City code.
   iii. Product ramps (those designed to facilitate movement of goods) shall be provided in a configuration and width to allow users to pass each other in each direction. Customer ramps (those designed for use by the customer with a pushcart) shall be a maximum slope of 5%, as commercially feasible. Industrial ramps (those designed for use by an employee using a forklift or pallet jack) shall be a maximum slope of 10%, as commercially feasible.
   iv. Vehicular ramps (those designed for use by cars, vans and box trucks) shall be a maximum slope of 10% if possible, as commercially feasible.
   v. Where exterior stairs and ramps are provided they may be covered to the extent commercially feasible. This covering will enhance both the safety and usability of these elements.

d. Site lighting - Adequate site lighting and site control to facilitate the Permanent Off-Site Facility operations, which often occur in nighttime hours and include product delivery, intermarket goods movement, shopping, and loading functions. The site will serve pedestrian, vehicular, and forklift traffic. As such, lighting levels shall meet City and industry standard code and provide a high level of safety.

e. Signage – Provide all signage required by applicable law. Provide identity and promotional signage and striping as permitted by law.

f. Access control - Site access control features such as gates, card readers, ticket dispensers, security cameras, and pay stations.

g. Landscaping - Landscaping including planting (as appropriate or required by the City of San Francisco), growing medium, landscape structures (e.g., planters) water proofing as necessary, and irrigation as required by the SFPUC Stormwater Management Ordinance.

h. Utilities - including but not limited to gas, electrical, telephone/data (wire and fiber), domestic water, fire water, recycled water (if required), sanitary sewer, storm sewer. These utility connections may be required as upgrades to existing utilities or new utility infrastructure depending upon existing conditions.
   i. Gas - Routing, meters and sub-meters, meter pads, protection, and structures required for gas system.
   ii. Electrical - Subgrade structures, conduits, pull boxes, meters, pads, protection, and any other infrastructure necessary for the construction of electrical systems.

iii. Telecommunications – Industry standard telecommunications facilities. The system must include all required conduit, subgrade or overhead structures, pull boxes, and connection to Main Point of Entry (MPOE). The system shall include distribution and connection of a working system to all components of the building as required by code (e.g., elevator, fire alarm), to all tenant spaces, and to all management and operations facilities. Individual phone switches and phone systems are to be provided by tenant.

iv. Domestic Water – Piping, connections, subgrade structures, meters, and protection for a full domestic water system. It is understood that the floral industry utilizes significant, quantities of process water. All facilities shall be sized to accommodate these industry requirements.

v. Fire Water - Piping, connections, subgrade structures, meters, and protection for a full fire water system

vi. Recycled Water – All required components to be in compliance with San Francisco Recycled Water Ordinance, if required

vii. Sewer - Piping, connections, subgrade structures, meters, and protection for a full sewer system. It is recognized that multiple points of connection may be required. All designs must comply with the SFPUC's Stormwater Management Ordinance.

C. Building Construction

1. Code Classification

Due to the uncertainty of the specific location, whether the project will entail renovation of existing building and/or new construction, the uncertainty of some attributes of the Permanent Off-Site Facility, and the possibility of the wholesale flower market use being combined with other users or uses, it is not possible to confirm all of the key aspects of compliance with the San Francisco Building Code. This uncertainty affects, among other things, building type classification and component (structure, walls, floors, structure, roofs) ratings. The following outlines what is expected regarding code compliance.

a. The Permanent Off-Site Facility is anticipated to contain the following building occupancies:
    i. Occupancy classification M – Mercantile (sales floor)
    ii. Occupancy classification S-1 (product storage) and/or S-2 Storage (storage and garage)
    iii. Occupancy classification B – Business/Office (Offices)
    iv. Occupancy classification A-2 – Assembly
b. The Permanent Off-Site Facility will likely be a Type II, III, or V building with an A or B fire rating designation. The building will be fully sprinklered. If the Permanent Off-Site Facility is located, fully or partially, in existing buildings which will be renovated, Building Type will be dependent on the existing construction and the proposed improvements. It is anticipated that the renovation approach to the

Permanent Off-Site Facility will likely be a Type III or Type V building with an A or B fire rating.

2. Energy Compliance and Sustainability

The building will be required to comply with California Energy Code, and San Francisco's Green Building Ordinance and associated requirements. Energy calculations using either the prescriptive or performance method may be used to gain approvals of this nature.

3. Building Systems

Building construction is recognized to encompass:

- The renovation of existing structure(s) and/or new construction.
- A single building or multiple buildings as the location and circumstances of the Permanent Off-Site Facility require.
- A single-story building or a two-level building as the location and circumstances of the Permanent Off-Site Facility require.
- A portion or part of a building which houses other uses.
- Tenant demising partitions
- Tenant Stall fit-outs
- Refrigeration systems
- Common Area fit-out

Building construction includes the following summary of activities, components, and systems as required for the complete and successful construction of the Permanent Off-Site Facility. Due to the lack of a developed design, program, or site for these improvements, the below is a projection of potential Project components.

a. Demolition - Demolition of necessary portions of buildings (or building components), and site work as required for construction of the Permanent Off-Site Facility. Demolition to include the abatement of identified hazardous materials and the certification by appropriate agencies that abatement activities are complete and properly conducted.
b. Earthwork (if required)
    i. Grading - Rough and finish grading and site preparation
        - Rough grading and export of excess soils
        - Import of required soils, gravel and sand
        - Placement and compaction of soils
        - Working within, handling and disposal of hazardous soils and other subsurface materials.
        - Void form materials – if recommended by a geotechnical engineer, void form materials such as Styrofoam required for the forming of the slab on grade shall be used.
    ii. Soil Improvement – Includes soil improvement required by geotechnical engineering and hazardous materials handling and abatement, if required for existing hazardous conditions. All soils improvement will be

coordinated closely with the structural design of the building in order to achieve long-term performance. Soil improvement is likely to be more extensive in areas of new construction, with soil improvement in areas of renovation potentially being limited by access, and interface with existing building components.

c. Foundations and slabs-on-grade
    i. Cast-in-place concrete foundations (or other options depending on the site) – Foundations to be developed to tie building structural systems to appropriate soils improvement methods.
    ii. Cast-in-place concrete slab-on-grade – Slab-on-grade will be of size and reinforcement to support warehouse type activities, including 3-high pallet racking minimum. If necessary due to subsurface soils performance, a structural slab can be provided. The slab of grade(s) in new construction shall be designed to achieve long-term performance and shall meet industry standards: To the extent possible all MEP components (except drainage shall be routed overhead.
    iii. The slab shall be finished and sealed appropriately, for the use of flower and plant storage and sales. Slab-on-grade can either be sloped to drain or flat, or a combination of the two (see Section 11- Mechanical Electrical and Plumbing).
    iv. Vapor and moisture barriers may be provided, as appropriate for under slab conditions, requirements of finish materials above slab, and all regulatory requirements.
    v. If required by Phase II site assessment, a vapor mitigation system shall be provided.
    vi. When renovation and re-use of existing building(s) occurs, seismic strengthening of the foundations and slabs-on-grade (or structural slabs) shall be provided as recommended by Project Structural Engineer and/or Geotechnical Consultant, and as required by code.

4. Superstructure

Due to uncertainty related to the design of the Permanent Off-Site Facility, which extends to many aspects of the superstructure including whether the building is in a renovated structure or new construction, it is not possible to prescribe a specific superstructure system. The superstructure may meet the following suggested parameters:

a. Superstructure shall support load (dead, live, and lateral) to accommodate the following uses:
    i. Three (3) high racking of materials including live plant material, cut flowers and other cut materials, dry goods, and other floral materials. Superstructure (e.g. roof) may be designed to allow for bracing of pallet racking as necessary.
    ii. Use of industrial equipment such as forklifts, pallet jacks, conveyor systems, logistics systems, and others.

iii. Vehicle ramps and parking on elevated parking deck by vehicles including fully loaded passenger vehicles, sprinter vans, and medium box trucks (24' long or shorter).
iv. Future Tenant Improvements loads (e.g. mechanical equipment, refrigeration panels, fire sprinkler lines, etc.)
v. When renovation and re-use of existing building(s) occurs, seismic strengthening of the superstructure shall be provided as recommended by Project Structural Engineer and/or Geotechnical Consultant, and as required by code.

b. To the extent the Permanent Off-Site Facility involves new infill construction, the superstructure is recognized as a key aspect of the Permanent Off-Site Facility design and could be designed using different structural approaches and materials. It is understood that cost, long term performance, seismic resistance, durability, ability to accommodate the installation of a floor drainage system to adequately serve each vendor stall, and flexibility are key aspects in the selection of a structural system and the particulars of its design.
c. The following structural systems or components are potential solutions for the Permanent Off-Site Facility, to the extent that it involves new construction:
   i. Steel frame, metal deck with concrete fill (including wide flanges and/or open web steel joists)
   ii. Pre-cast concrete with topping slab
   iii. Brace frames (including BRBS)
   iv. Cast-in-place concrete shear walls and/or floors
   v. Pre-cast concrete panels
d. The superstructure combines with other systems to create solutions to key aspects of the design. Key building systems, which interact with the superstructure are:
   i. Vertical enclosure
   ii. Horizontal enclosure
   iii. Fire proofing
   iv. Fire protection
   v. Mechanical, electrical, and plumbing
   vi. Other similar components or combinations of the above

The superstructure may be designed so that vibrations generated by forklifts, pallet jacks, industrial mechanisms and vehicles (cars and trucks) do not negatively affect potential other uses in the building.

5. Exterior Vertical Enclosures

Due to the uncertain design of the Permanent Off-Site Facility, which includes but is not limited to the massing, shape, long lifecycle goals, use parameters, SFPD and SFDBI design requirements, and other controls, it is not possible to prescribe a specific vertical enclosure system. The following are key quality and performance components that may be incorporated:

a. Acceptable systems or key components of systems anticipated to meet the use assumptions of the project may include:
    i. Tilt-up concrete walls (for new construction)
    ii. Pre-cast concrete panels (for new construction)
    iii. Metal panels and siding (insulated or non-insulated (for new construction)
    iv. Metal studs and metal support systems (for new construction)
    v. Insulation (batt and rigid) to meet or exceed either the appropriate prescriptive or performance standards (for new construction)
    vi. Fire proofing and associated protection and cover
    vii. Metal windows (aluminum and steel) (for new construction)
    viii. Storefronts and entrances
    ix. Glass and glazing
    x. Metal doors and frames
    xi. Exterior sun control devices
    xii. Louvers
    xiii. Automatic coiling metal doors and security grilles
    xiv. Interior finishes of exterior walls (gypsum wall board, others)
    xv. Paint and sealants
    xvi. Crash protection in all vehicle areas
    xvii. Wall, MEP, and equipment protection
    xviii. combinations of the above
b. The building will be required to meet California Energy Code requirements. Selection of the components of the exterior vertical enclosures will be constrained by the need to achieve code compliance, which affects energy efficiency, reduced long-term energy costs, reliability, and simplicity.
c. The facility may have exterior features which are common or necessary for buildings of this nature and required by Governmental Agencies..
d. All structured parking areas (if they occur) shall be horizontally enclosed as is Code compliant for safety and security purposes. This enclosure shall control access by both vehicles and people.

6. Exterior Horizontal Enclosures

Due to the uncertain design of the Permanent Off-Site Facility, including such matters as the massing, shape, long lifecycle goals, use parameters, and requirements of government agencies, it is not possible to prescribe a specific horizontal enclosure system. The following are key quality and performance requirements:

a. Acceptable systems or key components of systems expected to meet the requirements of the project are:
    i. Membrane roofing.
    ii. Protected membrane roofing and topping slab on all areas of vehicle access and exterior pedestrian access to the building
    iii. Fire proofing and associated protection and cover

iv. Roof accessories and means of access, for maintenance
v. Flashings and related components
vi. Solar panels and related components (as may be required to meet SF Better Roofs Ordinance)
vii. Green roof systems and components (as and if required to meet SF Better Roofs Ordinance)

b. If SFFM and/or other space of the facility are located on an elevated slab, adequate drainage, combined with a protected membrane and topping slab, may be required to ensure that water from the vendor operations does not penetrate the elevated slab and affect other building occupants below. A similar assembly may be required beneath any traffic way or pedestrian access path including, ramps, parking and loading areas, vehicle paths, and elevated sidewalks.
c. Daylighting is a key feature in the display of floral goods. Roof design for new infill buildings may include a variety of potential roof forms and components to enhance daylighting and reduce the necessity for artificial lighting. These forms and components may include, but are not limited to:
    - Skylights (individual or in series)
    - Light monitors
    - Clerestory light forms
    - Other forms which are complimentary to the building and use.
d. All structured parking areas (if they occur) shall have horizontal enclosure which meet Code.

7. Interior Construction and Finishes

Due to the uncertain design of the Permanent Off-Site Facility, which includes but is not limited to the location and site, form, components, and fit-out of the interior spaces of the facility, it is not possible to prescribe a specific program for interior construction and finishes. The following are potential quality and performance parameters:

a. Common Areas - Construction shall include all common areas of the facility. These common areas include, but are not limited to:
    i. Horizontal and vertical common circulation elements - entrance lobbies, corridors, halls, hallways (as they relate to vertical circulation), stairs (exit and otherwise) and elevator lobbies that are used by either building occupants or tenants.
    ii. Common loading – All loading areas which are shared by vendors. These loading areas include dock area (both inside and outside the building), goods staging area, other ancillary spaces, and common refrigeration area.
    iii. Refrigeration at Common Loading – Common refrigeration area(s) located near the Common Loading Dock. For outline of responsibilities related to refrigeration see Specialized Refrigeration below.

iv. Building services – All areas, spaces and rooms which are necessary for the successful operation of the building such as mechanical rooms, electrical rooms, fire control rooms, telecom/data rooms, fire pump rooms if required, cisterns and cistern pump if required and equipment areas, elevator (or similar) equipment rooms, janitorial spaces, and all other rooms or spaces containing key common functions of the building.

v. Common restrooms and showers (as required by Code) - Common restrooms shall comply with applicable building code requirements and shall be located for the convenience of vendors and customers, which may entail providing multiple restrooms of a small size in place of single large restrooms. Common showers (a governmental agency requirement related to bicycle provisions) shall be designed and located to provide occupant security and improved for long-term use.

vi. Bicycle storage – Bicycle storage and other related amenities as required by Code.

vii. Common hallway – The vendors may be connected by a common hallway. This hallway may be constructed with the use of coiling grills and doors (misc. metal support systems), interior storefronts and entries, and interior walls sufficient for the use of the vendors and to provide access and security.

viii. Management and operations facilities – Space allocated and specifically designed for the purposes of managing and operating the building and coordinating its use. This space may include:

- Management office – An appropriately sized and appointed business office for the management of the facility. This space may include reception, open office area, private offices, (total office size to accommodate 6-10 staff) break room, and file storage and printing area and a conference room to seat approximately 45 people.
- Operations Area(s) – Maintenance space(s) sized, configured, and improved to industry standard. This space(s) may be designed and constructed to accommodate:
  - All types of refuse collection and disposal including, but not limited to, garbage, recycling, compost, plastic wrap, common containers, and pallets. The space shall be provided with industry standard compactors (including trash and organic waste compactors of sufficient number and capacity), bailers, dumpsters, other equipment required to process all refuse streams, and sized to accommodate such equipment safely and efficiently.
  - Equipment charging area - Maintenance and charging location for industrial equipment necessary to operate by the facility.

This equipment may include, but is not limited to, forklifts, pallet jacks, ride-behind, or walk-behind floor scrubbers, ladders, and lifts.

- Shop and facility maintenance space – Area provided for building engineering with tools and equipment appropriate for operating a facility of this scale and use.
- Operations hub - Office and locker room sized to accommodate the facility's operations personnel.

b. Demising and Fit-out of Vendor Stalls - Construction shall include the subdivision of the vendor area into individual vendor spaces or stalls (the Stalls) of varying sizes. There will be up to 45 Stalls consisting of a mix of the different vendor types as outlined below and in varying sizes starting at a minimum of 500 square feet. The vendor Stalls shall be designed to adequately support the needs of each vendor type and allow for flexibility, evolution of business approaches, and future growth of businesses. Due to the lack of a developed design, program, or location for these improvements, the below is a projection of potential likely requirements for the vendor Stalls. These descriptions are generic in nature. It is understood that the final vendor Stalls will be adapted to a varying degree to accommodate the specific shape, location within the facility, and business approach of the vendor. It is expected that each vendor fit-out will be to a typical industry standard for PDR space of this type, functionally equivalent to the existing wholesale flower market:

i. Cut Flowers – The primary product for this Vendor Type is cut flowers, which requires a significant portion of the space to be refrigerated for the display, storage, and processing of goods. The following describes some key elements that are specific to this Vendor Type:
   - Display & Sales Floor – Space allocated for ambient sales and transactions. Vendor Stall This space shall provide the following:
     - Signage for individual Vendor Stalls
     - Area of compartmentalized shelving to be used for customer storage of flowers while shopping
     - Platforms or shelving for display of goods
     - Point of Sales and transaction counter
     - Convenience outlets per code with additional outlets to support computers, check out functions, and sales activities
     - Worktable(s) for processing and bundling of purchased cut flowers
     - Telephone and data connection to individual Vendor Stalls and distribution to required areas
     - LED Lighting appropriate for use, and with desirable color rendering index
     - Floor finish appropriate for use as wet area
     - Floor drains as appropriate for use
     - Ceiling Treatment – Ceiling shall be treated in an appropriate way to facilitate a wholesale sales environment

- Refrigerated Display Area – Space allocated for the display of cut flowers. This may be constructed of pre-manufactured insulated, metal refrigeration walls with condensers mounted to roof of unit. Vendor Stall space shall provide the following:
    - Interior storefront with glass walk-in cooler doors
    - Platforms or shelving for display of goods
    - Lighting appropriate for use
    - Floor finish appropriate for use
    - 16' clear height minimum
- Refrigerated Sales, Storage & Processing – Space allocated for the storage (products both on display and stored) and processing of palleted and boxed goods, and storage & charging of industrial equipment. This space may be constructed of pre-manufactured insulated, metal refrigeration walls with split system refrigeration units. Vendor Stall space shall provide the following:
    - Refrigerated sales area enclosed with combination of insulated panels, windows and doors. Doors and openings to be equipped to minimize air loss.
    - Automatic cooler and man doors with opening protection
    - 3-high racking or shelving for storage of boxed goods and palleted goods, as appropriate
    - Worktable and sink for cutting and sorting of goods
    - Hose bib(s) and/or mop sink(s)
    - Sanitary sewer connection and drainage
    - Internal refuse area for organic, plastic and cardboard waste
    - Charging area for industrial equipment
    - Convenience outlets per code with additional outlets to support functions of space
    - Lighting appropriate for use
    - Floor finish appropriate for use
    - Floor drains as appropriate for use
    - 16' clear height minimum

ii. Hard Goods – The primary product for this Vendor Type is floral supplies, which requires a fully enclosed space with specific HVAC requirements and clear height for 3-high racking for the storage of hard goods. The following describes key elements that are specific to this Vendor Type:

- Display & Sales Floor– Space allocated for sales and transactions. This space may provide the following:
    - Signage for individual Vendor Stalls
    - Shelving for display of goods
    - Vendor Stall Point of Sales
    - Convenience outlets per code requirements at all spaces to support computers and check out functions

- Convenience outlets per code with additional outlets to support computers, check out functions, and sales activities
- Telephone and data connection to individual Vendor Stalls
- LED Lighting appropriate for use, and with desirable color rendering index
- Floor finish appropriate for use, with provisions for future use as a wet area
- Ceiling Treatment – Ceiling shall be treated in an appropriate way to facilitate a wholesale sales environment

- Storage & Processing – Space allocated for the storage of palleted and boxed goods, and storage and charging of industrial equipment. Vendor Stall space shall provide the following:
  - 3-high racking or shelving for storage of boxed goods and palleted goods
  - Charging area for industrial equipment
  - Worktable(s) for processing
  - Lighting appropriate for use
  - Hose bib(s) and/or mop sink(s)
  - Floor finish appropriate for use
  - Open ceiling

iii. Green Plants & Tropical Plants – The primary product for this Vendor Type is potted plants, which requires a fully enclosed space with specific HVAC and lighting requirements. The following describes key elements that are specific to this Vendor Type:

- Display & Sales Floor – Space allocated for sales and transactions. Vendor Stall space may provide the following:
  - Signage for individual Vendor Stalls
  - Shelving for display of goods
  - Point of Sales
  - Convenience outlets per code requirements, and at all spaces to support computers and check out functions
  - Convenience outlets per code with additional outlets to support computers, check out functions, and sales activities
  - Telephone and data connection to individual Vendor Stalls
  - LED Lighting appropriate for use, and with desirable color rendering index
  - Floor finish appropriate for use, with provisions for future use as a wet area
  - Ceiling Treatment – Ceiling shall be treated in an appropriate way to facilitate a wholesale sales environment
  - Specific HVAC requirements will be necessary for this Vendor Type depending on the specific products being sold.

- Storage & Processing – Space allocated for the storage of palleted and boxed goods, and storage and charging of industrial equipment. Vendor Stall space may provide the following:
    - 3-high racking or shelving for storage of boxed goods and palleted goods
    - Work table for processing
    - Hose bib(s) and/or mop sink(s)
    - Sanitary sewer connection and drainage
    - Charging area for industrial equipment
    - Lighting appropriate for use
    - Floor finish appropriate for use
    - Open ceiling
    - Specific HVAC requirements will be necessary for this Vendor Type depending on the specific products being sold.

iv. Hybrid – It is anticipated that vendors will be providing a combination of good types. It is uncertain at this time which combinations will exist. Therefore, these Stalls may be designed to support any combination of the above Vendor Type as well as any other requirements that arise due to the unique hybrid nature of the vendor.

v. Floral Center – This space shall be an area to provide for floral education and trade promotion, as well as providing small work spaces for floral designers in a "co-working" format. Primary components of the Floral Center are; Shared Work Area, Product Storage Area, and Co-working Office Area. The Floral Center shall be located near or adjacent to the Management Office, and in a way to allow for use of the large Meeting Room in conjunction with the Shared Work Area for education and trade events. It is expected that the Floral Center will be equivalent in cost per square foot to the cut flower vendor spaces.

The following describes key elements that may be incorporated into a Floral Center:

- Shared Workspace – A work area to be used in a "co-working" format by floral designers (4-8 designers) This space may provide the following:
    - Area of compartmentalized shelving to be used for storage of flowers
    - Large portable worktables
    - Floral cutters
    - Convenience outlets per code with additional outlets to support computers, and other equipment specific to this use
    - Telephone and data connections to support use
    - LED Lighting appropriate for use, and with desirable color rendering index

- Floor finish appropriate for use as wet area
- Floor drains as appropriate for use
- Large metal 3 compartment sink (both hot and cold water) with sprayer.
- Hose bib(s)
- 16' clear height minimum
- Internal refuse area for organic, plastic and cardboard waste
- General storage areas

- Product Storage Area – A product storage area separated approximately 10-12 different compartments to be used by floral designers. This space may provide the following:
  - Refrigerated area enclosed with combination of insulated panels, windows and doors. Doors and openings to be equipped to minimize air loss.
  - Refrigerated area to be sub-divided into approximately 10 areas for use by floral designers
  - Automatic cooler and man doors with opening protection
  - Racking and or Shelving for storage of flowers
- Co-working Office Area – A business support space to be used by floral designers. The space may provide small office areas for approximately 10-12 floral designers in a co-officing (open office) format. This space may provide the following:
  - 10-12 office areas in an open office format. Each office area shall include but is not limited to: desk, file storage, and network, internet and phone connection(s).
  - (1) business center which shall include but is not limited to; file storage, color printer/copier, work area.

c. Construction components - As noted above, the building may have a variety of use goals. Therefore, the interior fit-out of the common areas may be completed in a way that emphasizes functionality, flexibility, sustainability, resilience, and long lifecycle. An outline of potential acceptable materials follows.
   i. Metal panels and siding
   ii. Metal studs and metal support systems
   iii. Insulation (batt and rigid)
   iv. Fire proofing and associated protection and cover
   v. Metal windows (aluminum and steel)
   vi. Storefronts, entrances, and curtain walls
   vii. Glass and glazing
   viii. Metal doors and frames
   ix. Louvers

x. Automatic coiling metal doors and security grilles
xi. Crash protection
xii. Plywood paneling
xiii. Fiber reinforced panels
xiv. Gypsum board partitions
xv. Paint and sealants
xvi. Other similar components or combinations of the above

d. Protection - The Permanent Off-Site Facility may be a combination of a light industrial working environment and a wholesale marketplace. This combination of uses will require protection components. An outline of potential acceptable materials follows.
    i. Steel bollards
    ii. Concrete curbs
    iii. Steel protection rails
    iv. Miscellaneous steel protections at openings (steel angles, tubes and other shapes)
e. Assessment - When renovation and re-use of existing building(s) occurs, the building's Interior Construction and Finishes will be assessed to determine what if any interior components should be reused. The assessment of these systems will include but is not limited to; age of existing components, conditions of improvements, serviceability of existing components, applicability to re-use program, and visual appearance.

8. Specialties and Equipment

Due to the uncertain design of the Permanent Off-Site Facility, which includes but is not limited to, the overall configuration of the building and specific layout of uses, it is not possible to prescribe specific criteria for Specialties and Equipment. The following describes potential components of these areas of the building:

a. Building Signage
    i. Code required signage
    ii. Directional and business-related signage to clearly direct visitors, customers, and employees to all spaces and/or business entities in the facility.
    iii. Identity and Promotional signage as allowed by Code to establish relevant identities of associated business entities, and the New Wholesale Flower Market as a whole.
b. Interior specialties (see Interior Construction and Finishes)
c. Lockers (see Interior Construction and Finishes)
d. Storage assemblies and racking – Provide racking and storage assemblies in appropriate areas, which may include, but is not limited to, common loading,

common maintenance areas, vendor areas, and inside of Common Refrigeration areas.

e. Pest and bird control – Provide required pest and bird control systems to deliver a clean and useable space for vendors and a Facility that meets industry standard requirements.
f. Customer and vendor vehicle charging equipment –Provide vehicle charging equipment required by law,
g. Parking control equipment – Provide parking control as required to;
    i. Collect and administer gate and badge related fees.
    ii. Control access to the facility.
    iii. Admit members of the general public as desired.
    iv. Security grilles and gates to enhance access control.
h. Loading dock equipment – Provide loading dock equipment to create a fully functional, safe loading environment. This equipment may include, for each of the four loading docks, automatic dock levelers (and associated pits), dock bumpers, loading dock lights, insulated dock doors, dock seals and/or shelters, loading dock truck restraints, and other features commonly found in light industrial facilities.
i. When renovation and re-use of existing building(s) occurs, the buildings' Specialties and Equipment will be assessed to determine what if any of the components should be reused. The assessment of these systems will include, but is not limited to, age of existing components, serviceability of existing components, conditions of improvements, and applicability to re-use program.

9. Conveying Systems

Due to the uncertain design of the Permanent Off-Site Facility, which includes, but is not limited to, whether or not it includes a mezzanine level, it is not possible to articulate a specific program for conveying equipment. The following describes potential components and performance.

a. Passenger elevators – Passenger elevators may be required in the buildings. All passenger elevators shall be fitted with card key and/or keypad access control by level.
    i. Typical passenger elevators – Elevators that are industry standard to those found in a light industrial building, where use may be limited to people and not goods. Finishes and equipment shall provide performance and durability appropriate with this use. These elevators may be single or double sided.
    ii. Goods-related passenger elevators – Industry standard elevators, which are expected to carry both passengers (general public) and goods (including goods on carts). These elevators may be single or double sided.
b. Freight Elevators
    i. Freight elevators for goods and industrial equipment. These elevators may be a double-sided, Class C2, 12,000 lbs. rated, clad in metal mesh

or wall panels with metal diamond plate floor. All freight elevators may be fitted with card key access control by level.

10. Fire Suppression and Fire Alarm

Due to the uncertain design of the Permanent Off-Site Facility, which includes, but is not limited to, the number of stories of the building, the quantity height, and commodity classification of the products being stored, the existing water supply and pressure, and SFFM access to the Permanent Off-site Facility, it is not possible to prescribe a specific system for the fire suppression system. The following describes potential components and performance:

a. Fire sprinkler – The fire sprinkler systems shall be designed to meet all NFPA 13 requirements for the occupancies, uses, and spaces designed in the building. The design of the systems shall deliver long-term flexibility to the building to the extent commercially feasible. This flexibility is envisioned to allow for the design of tenant areas to evolve over time without being overly restricted by the fire suppression systems.
b. Storage areas (current or potential) – Shall be covered by an Early Suppression Fast Response (ESFR) system. It is assumed that all flower vendor space will be protected with an ESFR system.
c. If the building use and existing water service trigger the requirement by SFFD or other local authority for a fire pump and tank, this complete system shall be provided.
d. Due to their unique requirements and often limited access, urban light industrial facilities may be subject to additional SFFD requirements. Any additional requirements imposed by the SFFD or other local authority and any related to the New Wholesale Flower Market operation will be part of the Permanent Off-Site Facility. These requirements may include additional Fire Department Connections (FDC) and/or dry standpipes.
e. Fire alarm – A fully functional and fully installed Fire alarm system including all elements of architectural support to the building.
f. All components required to support building fit-out as outlined in Section 7 – Interior Construction and Finishes (and other parts of this Specification) are to be fully covered by the buildings Fire Suppression and Fire Alarm Systems.
g. When renovation and re-use of existing building(s) occurs, the buildings' Fire Suppression and Fire Alarm will be assessed to determine what if any of the components should be reused. The assessment of these systems will include but is not limited to; age of existing components, serviceability of existing components, applicability to re-use program, code compliance of system, and coordination of existing infrastructure with new improvements.

The Permanent Off-Site Facility construction shall provide a complete Fire Sprinkler and Fire Alarm system. Scope of work may include, but is not limited to:

Fire Sprinkler

a. Main fire water service(s) connection and back flow preventer(s)
b. Fire Department Connection(s)
c. Main Lines and Branch Lines
d. Distribution Lines
e. Final Fire sprinkler layout for all Base Building spaces
f. Sizing and connections to all components of the tenant spaces.
g. Fire tank and pump if required (including; room(s) electrical support, and generator)
h. All other components necessary for a complete system.

Fire Alarm

a. Main Panel
b. Fire Control room or space as required
c. Power and emergency battery power as required
d. All phone/data connections as required for system
e. All appliances required to cover scope of work
f. Components necessary for a complete system.

11. Mechanical, Electrical and Plumbing

Due to the uncertain design of the Permanent Off-Site Facility, which includes but is not limited to the number of stories of the building and what functions are located on which stories, and the particular layout of spaces, it is not possible to prescribe specific program for Mechanical, Electrical, and Plumbing systems. All spaces containing Mechanical, Electrical, and Plumbing systems shall be designed and installed in a manner which provides adequate space for all maintenance activities. The following describes potential components and performance:

1. Mechanical – Heating Ventilation and Air Conditioning (HVAC) will be required in the building including all spaces that are classified as Mercantile by the DBI. As noted above, the building will have Code-related requirements and system design parameters, some of which are outlined below:
    i. Meeting California Energy Code (using either prescriptive or performance methods).
    ii. Explore passive ventilation strategies.
    iii. Acoustic and air quality performance levels shall meet use requirements.
    iv. Ensure long life cycle equipment selection, including proper coating to resist local marine climate caused corrosion.
    v. An HVAC control systems link to Building Control System shall be provided.
    vi. HVAC system selection shall be completed in concert with other building systems and with consideration to the objective above.
    vii. HVAC systems shall be delivered to be a completely functional system.

viii. MEP Systems shall be fully commissioned.

ix. All systems shall be connected to the gas and electrical systems of the building in support of a multi-tenant format.

The Permanent Off-Site Facility construction shall provide a HVAC system which shall be complete and functional. Scope of work may include, but is not limited to:

a. HVAC units (including structural support, and electrical and gas connections)
b. Distribution and return air duct work as required for fully functional system. Distribution duct work to supply all areas of the building. Tenant Stalls shall be provided with distribution to all internal spaces.
c. Distribution of HVAC systems in Common Tenant Hallway as required
d. Distribution of HVAC systems within Common Refrigeration Area
e. Control systems shall be provided, including control systems as necessary for Tenant Stalls.
f. Control systems required to operate the system and connect to Building Management Control System.
g. Other components necessary for a complete system.

2. Electrical – The building will require an electrical system, governmental agency and utility requirements and system design requirements are outlined below:
   i. Meeting California Energy Code (using either prescriptive or performance methods).
   ii.
   iii. Electrical system shall contain the following:
      - Appropriately sized (amperage and voltage) main service and switch
      - Appropriate number of meters to provide for both common area and individual tenant stall metering.
      - Transformers as required by use.
      - Distribution.
   iv. Provide LED lighting throughout with full design control of specified color rendering index, as desired lighting shall simulate daylighting or other points along the color rendering spectrum.
   v. A lighting and electrical control system to link to the building control system shall be provided. This system may optimize both the environment (indoor and exterior) as well as energy use.
   vi. All electrical systems of the building in support of a multi-tenant format.
   vii. If required, the rooftop solar collection system may be connected to the electrical system for complete system performance.

viii. All wiring to appliance, outlets, and lighting is to be provided in the areas defined as Permanent Off-site Facility areas.

ix. Emergency power shall be provided, as required by code.

The Permanent Off-Site Facility construction shall provide an electrical system which shall be complete and functional. Scope of work may include, but is not limited to~~;~~:

a. Main Connection, switch gear, meters for each tenant stall, transformers, and main panels
b. Distribution and subpanels as required to serve all building areas
c. Lighting, connections, and controls to serve all building areas (interior and exterior)
d. Electrical connection of all equipment.
e. Conveyance outlets per code and use requirements throughout building.
f. Distribution and subpanel(s) designed to accommodate each tenant by program design.
g. Distribution to and subpanels for the connection of all Tenant related equipment.
h. Electrical distribution, convenience outlets, connection of equipment, and lighting at Tenant Stalls
i. Electrical distribution, convenience outlets, convenience outlets and lighting at Tenant Hallway
j. Electrical distribution, convenience outlets, connection of equipment, and lighting at Common Refrigeration
k. Lighting, conveyance outlets, and connection of equipment in all exterior spaces.
l. Lighting, conveyance outlets, and connection of equipment all areas of structured parking.
m. Control systems required to operate the system and connect to Building Management Control System.
n. Other components that meet industry standard for a complete system.

3. Plumbing– Plumbing system will be required in the building. As noted above, the building may have Code-related requirements and system design parameters as outlined below:

i. Meet code requirements aimed at water use reduction
ii. Meet SFPUC code requirements with respect to stormwater and recycled water.
iii. Provide a system(s) that balances water use, proven technology, and user requirements.
iv. Plumbing system may have following key components:

- Domestic cold water – Provide cold water to all common area spaces and to all flower tenant spaces.
- Domestic hot water – Provide domestic hot water to all common area functions that require hot water (i.e., bathrooms and showers). Provide domestic hot water as required in flower tenant spaces.
- Sanitary sewer – Provide complete sanitary sewer system for facility including connections to all sewer laterals, connections to common area plumbing systems, sanitary sewer drains and associated laterals to all flower vendor spaces as required for current and future use.
- Storm sewer – Provide SFPUC compliant storm sewer systems using a combination of elements to meet SFPUC requirements. These elements could include cisterns and associated infrastructure, green roofs, flow through planters, infiltration systems, and others.
- Sanitary and storm sewer systems will be kept separate on-site and joined as necessary to connect to the combined sewer system in the street.

The Permanent Off-Site Facility construction shall provide a plumbing system which shall be complete and functional. Scope of work may include, but is not limited to:

a. Main Domestic water connection, meter, landscape water connection, recycled water connection if required.
b. Domestic water as required for all building spaces and equipment.
c. Fully functioning plumbing systems for all Common Area components, including but not limited to Restrooms, Showers, etc.
d. Connection to all hose bibs and other water sources needed for cleaning and maintenance of the facility.
e. Distribution of domestic water to each of the Tenant Stalls sized appropriately for use.
f. Plumbing distribution, and appliances (e.g. hose bibs) and connection of equipment and refrigeration within Tenant Stalls.
g. Plumbing distribution, and appliances (e.g. hose bibs) within Tenant Hallway.
h. Provide fully functioning sanitary sewer system which shall include floor drainage (floor drains or trench drains) adequate for use throughout the facility including, but not limited to the following:
    - All exterior spaces
    - All areas of structured parking.
    - Common loading
    - Common hallway
    - Tenant Spaces

- Provide drain element for condensate as required for Tenant installed Refrigeration

i. Gas service(s) and associated meters
j. Gas distribution to all required equipment servicing Base Buildings.
k. Components necessary for a complete system.

4. Telcom and data and low voltage – Connection will be provided for outside service providers to the Main Point of Entry (MPOE) in a telecom/data room. Conduits and/or appropriate raceways will be provided for service providers to route cables to MPOE. Raceway (and route) to all levels of the building and to all tenant spaces will be provided. The system shall include distribution and connection of a working system to all components of the building as required by code (e.g., elevator, fire alarm). The system shall include the distribution to each tenant space in size and number to facilitate the appropriate business operations of the tenant. The systems shall include distribution to all management related spaces (offices, operations centers, etc.) in size and number to facilitate appropriate business operations.

   The Permanent Off-Site Facility construction shall provide a Telecom and Data system which shall be complete and functional. Scope of work shall include but is not limited to;

   a. Main Point of Entry Room or space
      - Provide connection point to Data/Telcom infrastructure inside of each Tenant Stall.
      - Provide distribution of Data/Telcom from point of entry into Tenant Stalls to the final locations.
      - Provide connection to all building life safety systems including; Fire Alarm, security, system, elevator,
      - Provide connection to Building Management Control System.
   b. Provide a building security system including access control and video surveillance. System may include both interior and exterior areas of the facility.
   c. Components necessary for a complete system.

d. Components necessary for supporting building fit-out as outlined in Section 7 – Interior Construction and Finishes (and other parts of this Specification).
   e. When renovation and re-use of existing building(s) occurs, the buildings' Mechanical, Electrical and Plumbing will be assessed to determine what if any of the components should be reused. The assessment of these systems may include, but is not limited to, age of existing components, consistency of existing components, expected life span of system, serviceability of existing components, , code compliance of system, coordination of existing infrastructure with new improvements.

12. Specialized Refrigeration Mechanical Systems

It is recognized that the complete Permanent Off-Site Facility may have specialized refrigeration. This refrigeration may be located in and around the common loading area and within tenant stalls. The exact size, capacity, capability, and nature of these refrigerated spaces is not at this time known, but is estimated to comprise a significant portion of the Vendor Stalls, and in common loading areas. Scope of work may include but is not limited to:

a. Dedicated areas and structural support for all equipment associated with the Specialized Refrigeration.
b. Structural support of all refrigeration walls and ceilings, it is assumed that the refrigeration ceiling panels will be suspended from the structure above (e.g. roof or floor)
c. Distribution of electrical to connect to and operate Refrigeration Systems.
d. The complete refrigeration (and specialty heating) systems including but not limited to: walls, ceilings.

In order to increase operational and spatial efficiency, New Wholesale Flower Market refrigeration may be designed in a manner that allows for a cohesive customer experience, both viewing refrigerated display areas from ambient shopping areas via large windows, as well as shopping within refrigerated display spaces via doorways connecting to the ambient sales area. This design approach would allow for improved spatial organization and maximize operational efficiencies and product lifespan.

End

Exhibit G

Exercise Notices

Exhibit G-1

Form of City's Exercise Notice

[Planning Director Letterhead]

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

Re: Development Agreement by and between the City and County of San Francisco (the "City") and KR Flower Mart LLC ("Developer"), dated for reference purposes as of _____, 2019 (the "Development Agreement")

Dear Sir or Madam:

In accordance with Section __ of the Development Agreement, we write to exercise the Permanent Off-Site Option [*or, if applicable, the Stay Option*]. Please proceed Permanent Off-Site Facility at _____ [location of Alternative Permanent Site] in accordance with the Development Agreement and proceed with the Project Variant. [*or, if Stay Option exercised: Please proceed with the Project and not the Project Variant.*]

Nothing in this letter revises or amends the Development Agreement, or results in a waiver of any rights under the Development Agreement by either Party.

Thanks for your cooperation.

Sincerely,

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
[John Rahaim], Director of Planning

By: _____
[Ken Rich], OEWD Director of Development

cc: Louise Renne, Geoffrey Spellberg, Renne Public Law Group
Richard Shapiro, Farella Braun + Martel
Adam Engelskirchen, Engelskirchen Law
Daniel Frattin, Tuija Catalano, Reuben, Junius, & Rose, LLP
Charles Sullivan, City Attorney's Office

Exhibit G-2

Form of Vendor's Stay Notice

[Renne Public Law Group Letterhead]

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

Ken Rich
OEWD Director of Development
City Hall, Rm. 448
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

Re: Development Agreement by and between the City and County of San Francisco (the "City") and KR Flower Mart LLC ("Developer"), dated for reference purposes as of _____, 2019 (the "Development Agreement")

Dear Sir or Madam:

In accordance with Article 3 of the Development Agreement, we write this on behalf of the San Francisco Flower Market Tenants' Association, an unincorporated association (the "Tenant Association"), to request that the City exercise the Stay Option under the Development Agreement.

This firm represents the Tenant Association in connection with the proposed relocation of the Flower Market resulting from the Project described in the Development Agreement. In our capacity as legal counsel, this office has reviewed all matters that we consider necessary to write this letter. Specifically, and without limiting the generality of the foregoing, we have examined:

1. The organizational documents (including the articles and bylaws) of the Tenant Association;

2. The meeting notices for the Tenant Association meeting on _____, and the Tenant Association documents attached to this letter;

3. The Development Agreement; and

4. The Tri-Party Agreement.

Based on the foregoing, we are of the opinion that that the Tenant Association is duly formed, and that at a duly noticed meeting of its members held on _____, 2019 the Tenant Association took all appropriate action to approve the resolution attached to this letter (the "Resolution"). As set forth in the Resolution, the Tenant Association requests that the City to exercise the Stay Option.

We write this letter for the benefit of the City and Developer, with the intent that the City and Developer (but no other person or entity) can rely on it for purposes of exercising the Stay Option and proceeding with the Project instead of the Project Variant.

[signature block]

Exhibit G-3

Form of Vendor's Permanent Off-Site Notice

[Renne Public Law Group Letterhead]

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

Ken Rich
OEWD Director of Development
City Hall, Rm. 448
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102

Re: Development Agreement by and between the City and County of San Francisco (the "City") and KR Flower Mart LLC ("Developer"), dated for reference purposes as of _____, 2019 (the "Development Agreement")

Dear Sir or Madam:

In accordance with Article 3 of the Development Agreement, we write this on behalf of the San Francisco Flower Market Tenants' Association, an unincorporated association (the "Tenant Association"), to request that the City exercise the Permanent Off-Site Option under the Development Agreement.

This firm represents the Tenant Association in connection with the proposed relocation of the Flower Market resulting from the Project described in the Development Agreement. In our capacity as legal counsel, this office has reviewed all matters that we consider necessary to write this letter. Specifically, and without limiting the generality of the foregoing, we have examined:

1. The organizational documents (including the articles and bylaws) of the Tenant Association;

2. The meeting notices for the Tenant Association meeting on _____, and the Tenant Association documents attached to this letter;

3. The Development Agreement; and

4. The Tri-Party Agreement.

Based on the foregoing, we are of the opinion that that the Tenant Association is duly formed, and that at a duly noticed meeting of its members held on _____, 2019 the Tenant Association took all appropriate action to approve the resolution attached to this letter (the "Resolution"). As set forth in the Resolution, the Tenant Association: (1) approves the City's

exercise of the Permanent Off-Site Option; and (2) approves the Tenant Association release and indemnity in the form attached to the Resolution.

We write this letter for the benefit of the City and Developer, with the intent that the City and Developer (but no other person or entity) can rely on it for purposes of exercising the Permanent Off-Site Option and proceeding with the Project Variant.

[signature block]

Tenant Association Release and Indemnity

As contemplated by Article ___ of the development agreement between the City and County of San Francisco (the "City") and KR Flower Mart LLC ("Developer"), dated for reference purposes as of _____, 2019 (the "Development Agreement"), the Tenant Association agrees, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to provide the following release and indemnity.

Release. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Tenant Association fully releases, waives and discharges, now and forever, any and all claims, demands, rights, and causes of action and covenants not to sue the Developer, the City, and their respective agents, and all persons acting by or through each of them, for (1) entering into the Development Agreement, (2) electing the [*Stay Option or Permanent Off-Site Option*] and approving the Project without the return of the wholesale flower market at Developer's Sixth and Brannan Street project site; (3) the displacement and relocation of Flower Market vendors consistent with the Development Agreement (collectively, the "Relocation Matters").

In connection with the foregoing release, the Tenant Association acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

> 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.

The Tenant Association acknowledges that the above release includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims, and that it has agreed to this release with full knowledge of this waiver and the effect of this waiver. Being fully aware of the consequences, Licensee intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

Indemnity. The Tenant Association agrees to indemnify, defend, reimburse, and hold the City harmless from and against any claims made by any member of the Tenant Association related to the Relocation Matters. The foregoing indemnity includes, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties. The Tenant Association specifically acknowledges and agrees that it has an independent obligation to defend the City from any claim that falls within this indemnity provision even if the allegation is groundless or false, which obligation arises at the time the City tenders the claim to the Tenant Association.

Survival. The above release and indemnity will survive the expiration or termination of the Development Agreement.

[add required signature blocks for the Tenant Association]

EXHIBIT H

Phasing, with Associated Community Benefits and Public Improvements

Project Planning Phasing

SFFM Current Project Planning Phasing

PUBLIC BENEFITS BY PHASE

Phase 1a

Will include construction of the Blocks Building and the basement with entry and exit ramps. The Wholesale Flower Market, two-thirds of the required POPOS, the relevant TDM proposed measures, and all of the bicycle parking are planned to come on line. The public way improvements planned for Morris Street, and the adjacent portion of 5th Street are also planned for Phase 1a.

Phase 1b

Will include construction of the Market Hall Building and 12,000 sf of the on site POPOS. The relevant TDM measures will also come on line. The public way directly adjacent to the Market Hall building along 5th Street and Brannan street will be improved.

Phase 1c

Will include construction of the Gateway Building and the remainder of the POPOS on and off site. Phase 1c will also include the off-site POPOS proposed for the project. The remaining TDM measures relevant to the Gateway Building will also come on line. The public way directly adjacent to the Gateway building site will be improved in Phase 1c.

POPOS Required for Office Program

	1:50 Office GSF	Required POPOS
Phase 1a	1,355,363 gsf @ 1:50	27,107 sf
Phase 1b	351,895 gsf @ 1:50	7,038 sf
Phase 1c	324,907 gsf @ 1:50	6,498 sf
Total	2,032,165 gsf @ 1:50	**40,643 sf**

POPOS Proposed

	Open to Sky (sf)	Under Cantilever with 20' - 40'-0" clr. (Up to 10% Allowed) (sf)	Offsite Public Amenity (sf)	**Total (sf)**
Phase 1a	22,195	425	4,490	27,110
Phase 1b	4,300	7,700	0	12,000
Phase 1c	830	0	703	1,533
Overall	27,325	8,125	5,193	**40,643**

Bicycle Parking (see notes below)

	Class I	Class II
Phase 1a	410	86
Phase 1b	0	0
Phase 1c	0	0
Total	**410**	**86**

Showers & Lockers

	Showers	Lockers
Phase 1a	14	84
Phase 1b	0	0
Phase 1c	0	0
Total	**14**	**84**

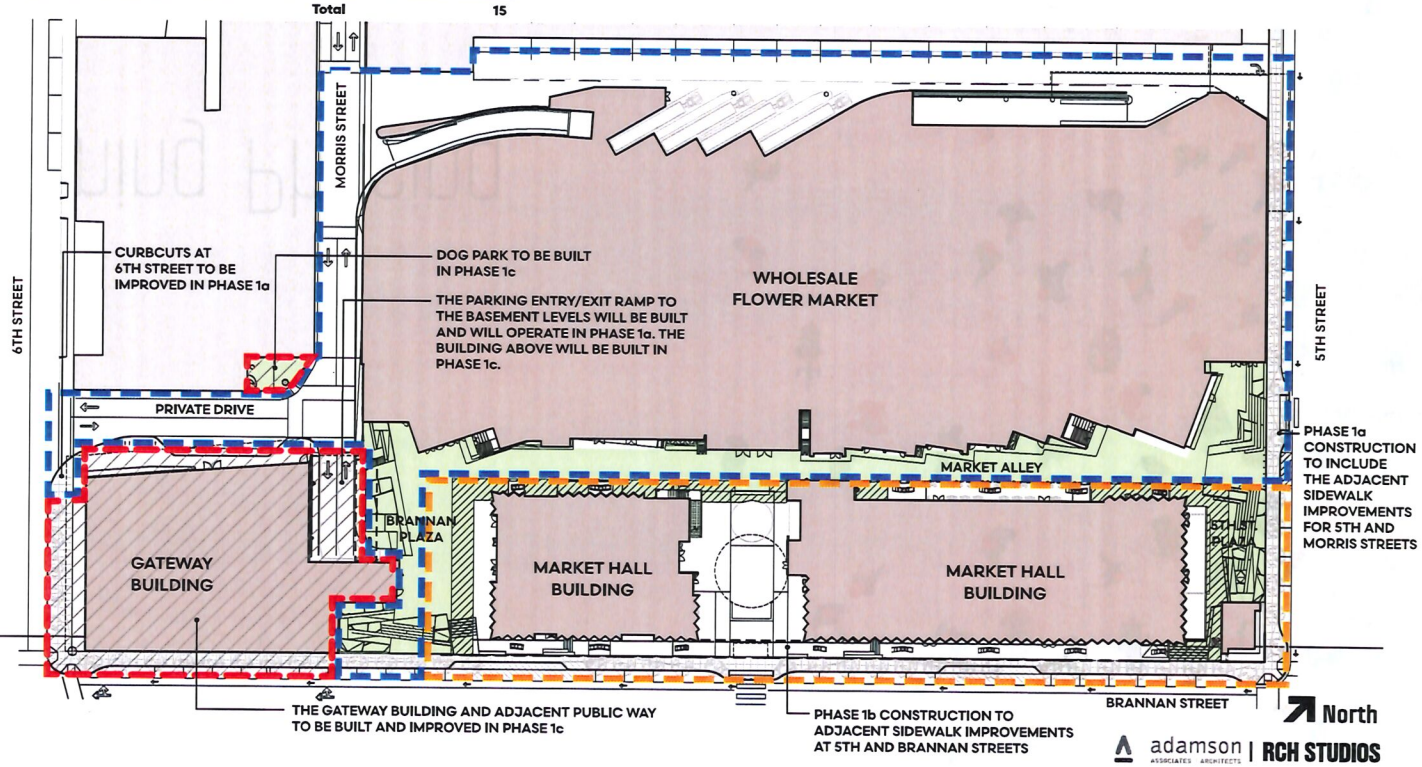
Class I bike parking is located at BG-01 level (-9').
Class II bike parking will be distributed between Plaza (+3'), At-Grade (0') and BG-01 levels (-9').

Car Share

	Spaces
Phase 1a	11
Phase 1b	3
Phase 1c	1
Total	**15**

LEGEND

- POPOS Open to Sky
- Building Footprint
- Context Buildings
- POPOS Under Cantilever
- Phase 1a Construction
- Phase 1b Construction
- Phase 1c Construction



SFFM Current Project Planning Phasing

TRANSPORTATION DEMAND MANAGEMENT PROGRAM PROPOSED
Implementation Matrix

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Phase 1a Benefits	Phase 1b Benefits	Phase 1c Benefits
ACTIVE-1	Improve Walking Conditions	A	1	1		Adjacent 5th St. frontage to be developed per Better Streets Plan Option A. Morris Street and the northern side of the Private drive will also be improved.	Adjacent 5th St. and Brannan St. frontage to be developed per Better Streets Plan Option A.	Corner of Brannan & 6th Street at the perimeter of the Gateway Building to be developed per Better Streets Plan and Option A
ACTIVE-2	Bicycle Parking	A	1	1	1	Required parking for Phase 1a, 1b, & 1c	N/A	N/A
ACTIVE-3	Showers and Lockers		1	1	1	Required showers and lockers for Phase 1a, 1b, & 1c	N/A	N/A
ACTIVE-4	Bike Share Membership	<1000 ft.	2	0		Will offer 1/2 the cost of memb.125ership to employees of retail that comes on line in each phase.		
ACTIVE-5A	Bike Repair Station		1	1		1 Repair Shop at 500sf to serve site including all phases.	N/A	N/A
ACTIVE-5B	Bike Maintenance Services		1	0		Will be provided as proposed to full-time retail employees in each phase.		
ACTIVE-7	Bike Valet Parking		1			Valet services will be offered as required for special events.		
CSHARE-1	Car-share Parking	A	1	1	1	11 spaces	3 space	1 space
DELIVERY-1	Delivery Supportive Amenities		1	1		2 spaces at 200 sf each to serve site including all phases.	N/A	N/A
DELIVERY-2	Provide Delivery Services		1			Will provide delivery services as required.		
HOV-3	Vanpool Service	B (retail), G (office)	2	7		6 vanpool spaces to be provided in Phase 1a.	3 additional vanpool spaces to be provided in Phase 1b.	3 additional vanpool spaces to be provided in Phase 1c.
INFO-1	Mulimodal Wayfinding Signage		1	1	1	Blocks Building related signage to be installed in Phase 1a.	Market Hall Building related signage to be installed in Phase 1b.	Gateway Building related signage to be installed in Phase 1c.
INFO-2	Real Time Transportation Information Displays		1	1	1	Blocks Building related signage to be installed in Phase 1a.	Market Hall Building related signage to be installed in Phase 1b.	Gateway Building related signage to be installed in Phase 1c.
INFO-3	Tailored Transportation Marketing Services	C (retail), B (office)	3	2		Will provide marketing materials and consultations to all new retail and office full-time employees for each phase.		
PKG-1	Unbundled Parking	D	4	4		Parking must be leased or sold as part of separate agreement.		
PKG-2	Short-term Daily Parking		2	2		Project parking will not be discounted for longer term parking.		

SFFM Project Variant 1: Without Wholesale Flower Market

PUBLIC BENEFITS BY PHASE

Phase 1a

Will include construction of the Blocks Building and the basement with entry and exit ramps. The ground floor of the Blocks Building will include the child care facility. Two-thirds of the required POPOS, the relevant TDM proposed measures, and all of the bicycle parking are planned to come on line. The bicycle parking will exceed the code minimum at 125% of code. The public way improvements planned for Morris Street and the adjacent portion of 5th Street are also planned for Phase 1a.

Phase 1b

Will include construction of the Market Hall Building and 12,000 sf of the on site POPOS. The relevant TDM measures will also come on line. The public way directly adjacent to the Market Hall building along 5th Street and Brannan street will be improved.

Phase 1c

Will include construction of the Gateway Building and the remainder of the POPOS on and off site. Phase 1c will also include the off-site POPOS proposed for the project. The remaining TDM measures relevant to the Gateway Building will also come on line. The public way directly adjacent to the Gateway building site will be improved in Phase 1c.

POPOS Required for Office Program

	1:50 Office GSF	Required POPOS
Phase 1a	1,384,578 gsf @ 1:50	27,692 sf
Phase 1b	351,895 gsf @ 1:50	7,038 sf
Phase 1c	324,907 gsf @ 1:50	6,498 sf
Total	2,061,380 gsf @ 1:50	**41,228 sf**

POPOS Proposed

	Open to Sky (sf)	Under Cantilever with 20' - 40'-0" clr. (Up to 10% Allowed) (sf)	Offsite Public Amenity (sf)	**Total (sf)**
Phase 1a	25,195	425	2,075	27,695
Phase 1b	4,300	7,700	0	12,000
Phase 1c	830	0	703	1,533
Overall	30,325	8,125	2,778	**41,228**

Bicycle Parking

	Class I	Class II
Phase 1a	516	92
Phase 1b	0	0
Phase 1c	0	0
Total	**516**	**92**

Showers & Lockers

	Showers	Lockers
Phase 1a	18	103
Phase 1b	0	0
Phase 1c	0	0
Total	**18**	**103**

Car Share

	Spaces
Phase 1a	8
Phase 1b	3
Phase 1c	2
Total	**13**

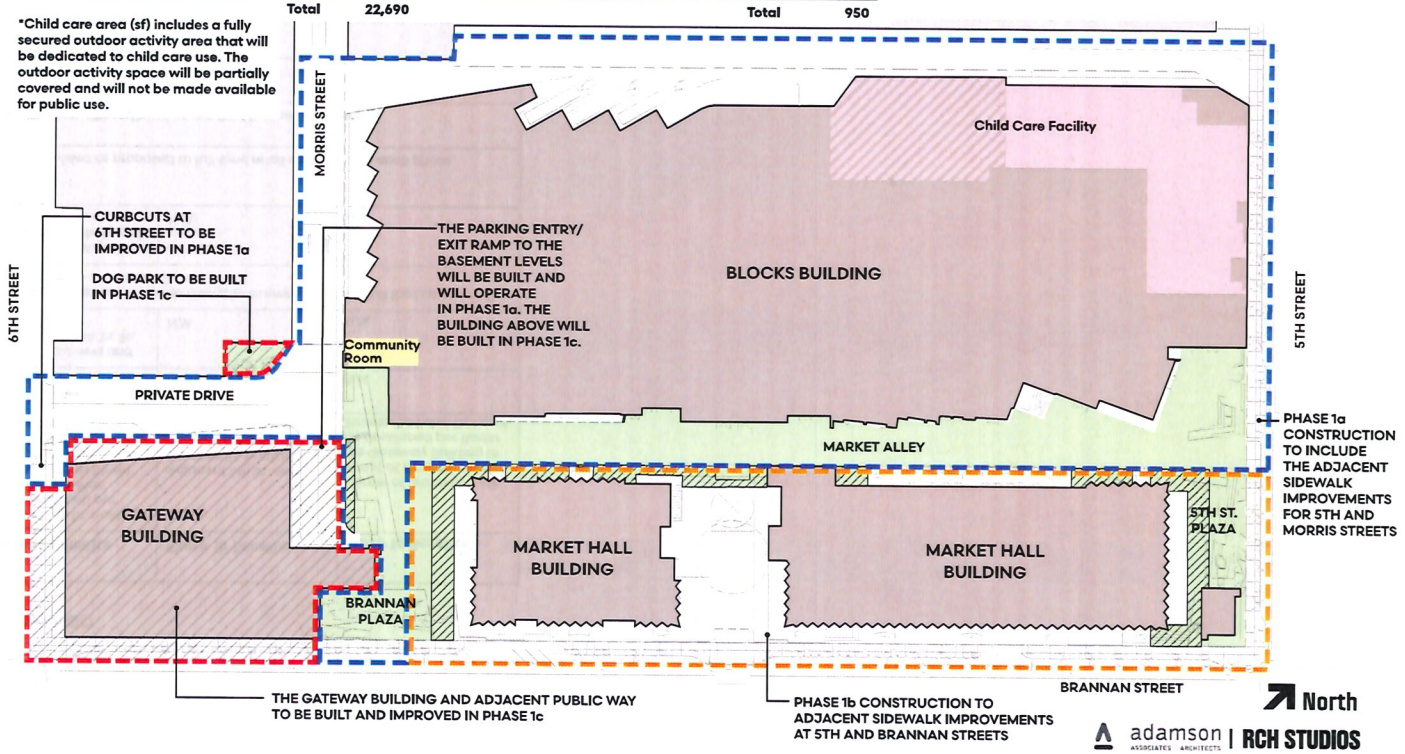
Child Care

	Area (sf)
Phase 1a	22,690
Phase 1b	0
Phase 1c	0
Total	**22,690**

Community Room

	Area (sf)
Phase 1a	950
Phase 1b	0
Phase 1c	0
Total	**950**

*Child care area (sf) includes a fully secured outdoor activity area that will be dedicated to child care use. The outdoor activity space will be partially covered and will not be made available for public use.



SFFM Project Variant 1: Without Wholesale Flower Market

TRANSPORTATION DEMAND MANAGEMENT PROGRAM PROPOSED
Implementation Matrix

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Phase 1a Benefits	Phase 1b Benefits	Phase 1c Benefits
ACTIVE-1	Improve Walking Conditions	A	1	1		Adjacent 5th St. frontage to be developed per Better Streets Plan Option A. Morris Street and the northern side of the Private drive will also be improved.	Adjacent 5th St. and Brannan St. frontage to be developed per Better Streets Plan Option A.	Corner of Brannan & 6th Street at the perimeter of the Gateway Building to be developed per Better Streets Plan and Option A
ACTIVE-2	Bicycle Parking	A	1	1	1	Class 1 bicycle parking for phase 1a, 1b, and 1c will be delivered. Spaces will be provided at 125% of code	N/A	N/A
ACTIVE-3	Showers and Lockers		1	1	1	Required showers and lockers for Phase 1a, 1b, & 1c	N/A	N/A
ACTIVE-4	Bike Share Membership	<1000 ft.	2	0		Will offer 1/2 the cost of memb.125ership to employees of retail that comes on line in each phase.		
ACTIVE-5A	Bike Repair Station		1	1		1 Repair Shop at 500sf to serve site including all phases.	N/A	N/A
ACTIVE-5B	Bike Maintenance Services		1	0		Will be provided as proposed to full-time retail employees in each phase.		
ACTIVE-7	Bike Valet Parking		1			Valet services will be offered as required for special events.		
CSHARE-1	Car-share Parking	A	1	1	1	8 spaces	3 spaces	2 spaces
DELIVERY-1	Delivery Supportive Amenities		1	1		2 spaces at 100 sf each to serve site including all phases.	N/A	N/A
DELIVERY-2	Provide Delivery Services		1			Will provide delivery services as required.		
HOV-3	Vanpool Service	B (retail), G (office)	2	7		6 vanpool spaces to be provided in Phase 1a.	3 additional vanpool spaces to be provided in Phase 1b.	3 additional vanpool spaces to be provided in Phase 1c.
INFO-1	Mulimodal Wayfinding Signage		1	1	1	Blocks Building related signage to be installed in Phase 1a.	Market Hall Building related signage to be installed in Phase 1b.	Gateway Building related signage to be installed in Phase 1c.
INFO-2	Real Time Transportation Information Displays		1	1	1	Blocks Building related signage to be installed in Phase 1a.	Market Hall Building related signage to be installed in Phase 1b.	Gateway Building related signage to be installed in Phase 1c.
INFO-3	Tailored Transportation Marketing Services	C (retail), B (office)	3	2		Will provide marketing materials and consultations to all new retail and office full-time employees for each phase.		
PKG-1	Unbundled Parking	D	4	4		Parking must be leased or sold as part of separate agreement.		
PKG-2	Short-term Daily Parking		2	2		Project parking will not be discounted for longer term parking.		

EXHIBIT I

Project Open Space and Streetscape Plan

The Project (and Project Variant) would provide the open space and streetscape improvements in general conformance with the plans approved by the Planning Commission on July 18, 2019.

EXHIBIT J

Transportation Demand Management

J.1 – Project TDM

J.2 – Project Variant TDM

PROJECT APPLICATION RECORD NUMBER (PRJ)

EXHIBIT J.1

TRANSPORTATION DEMAND MANAGEMENT (TDM) PROGRAM

SUPPLEMENTAL APPLICATION FOR A TDM PLAN

Revised Application - Planning Case No. 2017-000663TDM

Property Information

Project Address: 610-640 & 644-658 & 660-670 & 674-698 Brannan St., ~~548 5th St., 149 Morris St~~ Block/Lot(s): 3778/1B, 2B, 4, 5, 47, 48

☐ TDM Plan Amendment

TDM Program Land Use Tables

If you are not sure of the eventual size of the project, provide the maximum estimates. Gross Floor Area and Occupied Floor Area are defined in Planning Code Section 102. Refer to page 7 of the TDM Program Standards for a list of typical land uses that fall within each of the four land use categories, A - D. If you are amending any land use, parking, and/or target points, please indicate so within the table.

Land Use Category A (Retail)	
Gross Floor Area (GFA)	204,166 sf
Occupied Floor Area (OFA)	132,708 sf
Number of Accessory Parking Spaces	136
Target Points	32 (24 with 75% grandfathering)

Land Use Category B (Office)	
Gross Floor Area (GFA)	2,032,759 sf
Occupied Floor Area (OFA)	1,947,075 sf
Number of Accessory Parking Spaces	556
Target Points	31 (23 with 75% grandfathering)

Land Use Category C (Residential)	
Gross Floor Area (GFA)	
Occupied Floor Area (OFA)	
Number of Accessory Parking Spaces	
Target Points	

Land Use Category D (Other) Wholesale Flower Market	
Gross Floor Area (GFA)	115,000 sf
Occupied Floor Area (OFA)	112,995 sf
Number of Accessory Parking Spaces	150
Target Points	3 (2 with 75% grandfathering)

Pursuant to the pending Central SoMa zoning legislation, the project is grandfathered at a rate of 75% the otherwise applicable point target.

TDM PLAN WORKSHEET

Category	Measure	Points	Land Use Category: A Retail	B Office	C Residential	D Other
ACTIVE-1	Improve Walking Conditions: Option A; or	1	● 1	● 1	●	○ —
	Improve Walking Conditions: Option B; or	1	●	●	●	○ —
	Improve Walking Conditions: Option C; or	1	●	●	●	○
	Improve Walking Conditions: Option D	1	●	●	●	○
ACTIVE-2	Bicycle Parking: Option A; or	1	● 1	● 1	●	● 1
	Bicycle Parking: Option B; or	2	●	●	●	● —
	Bicycle Parking: Option C; or	3	●	●	●	●
	Bicycle Parking: Option D	4	●	●	●	○ —
ACTIVE-3	Showers and Lockers	1	● 1	● 1	⊘	● 1
ACTIVE-4	Bike Share Membership: Location A; or	1	●	●	●	○ —
	Bike Share Membership: Location B	2	◧ 2	◧	◧	○ —
ACTIVE-5A	Bicycle Repair Station	1	● 1	● 1	●	○ —
ACTIVE-5B	Bicycle Maintenance Services	1	● 1	●	●	○ —
ACTIVE-6	Fleet of Bicycles	1	●	●	●	○
ACTIVE-7	Bicycle Valet Parking	1	◧ 1	⊘	⊘	○
CSHARE-1	Car-share Parking and Membership: Option A; or	1	Ⓟ 1	Ⓟ 1	Ⓟ	Ⓟ 1
	Car-share Parking and Membership: Option B; or	2	Ⓟ	Ⓟ	Ⓟ	Ⓟ —
	Car-share Parking and Membership: Option C; or	3	Ⓟ	Ⓟ	Ⓟ	Ⓟ —
	Car-share Parking and Membership: Option D; or	4	Ⓟ	Ⓟ	Ⓟ	○ —
	Car-share Parking and Membership: Option E	5	Ⓟ	Ⓟ	Ⓟ	○ —
DELIVERY-1	Delivery Supportive Amenities	1	● 1	● 1	●	○
DELIVERY-2	Provide Delivery Services	1	◧ 1	⊘	⊘	○
FAMILY-1	Family TDM Amenities: Option A; and/or	1	⊘	⊘	●	⊘
	Family TDM Amenities: Option B	1	⊘	⊘	●	⊘
FAMILY-2	On-site Childcare	2	●	●	●	⊘
FAMILY-3	Family TDM Package	2	⊘	⊘	●	⊘ —
HOV-1	Contributions or Incentives for Sustainable Transportation: Option A; or	2	●	●	●	○ —
	Contributions or Incentives for Sustainable Transportation: Option B; or	4	●	●	●	○ —
	Contributions or Incentives for Sustainable Transportation: Option C; or	6	●	●	●	○ —
	Contributions or Incentives for Sustainable Transportation: Option D	8	●	●	●	○ — —

NOTES:

- A project sponsor can only receive up to 14 points between HOV-2 and HOV-3.
- Please tally the points on the next page.

Category	Measure	Points	Land Use Category A Retail	B Office	C Residential	D Other
HOV-2	Shuttle Bus Service: Option A; or	7	ⓑ	ⓑ	ⓑ	○
	Shuttle Bus Service: Option B	14	ⓑ	ⓑ	ⓑ	○
HOV-3	Vanpool Program: Option A; or	1	ⓐ	ⓐ	⊘	○
	Vanpool Program: Option B; or	2	ⓑ 2	ⓑ	⊘	○
	Vanpool Program: Option C; or	3	ⓑ	ⓑ	⊘	○
	Vanpool Program: Option D; or	4	ⓑ	ⓑ	⊘	○
	Vanpool Program: Option E; or	5	ⓑ	ⓑ	⊘	○
	Vanpool Program: Option F; or	6	ⓑ	ⓑ	⊘	○
	Vanpool Program: Option G	7	ⓑ	ⓑ 7	⊘	○
INFO-1	Multimodal Wayfinding Signage	1	ⓐ 1	ⓐ 1	ⓐ 1	ⓐ
INFO-2	Real Time Transportation Information Displays	1	ⓐ 1	ⓐ 1	ⓐ 1	ⓐ
INFO-3	Tailored Transportation Marketing Services: Option A; or	1	ⓐ	ⓐ	ⓐ	○
	Tailored Transportation Marketing Services: Option B; or	2	ⓐ 3	ⓐ	ⓐ	○
	Tailored Transportation Marketing Services: Option C; or	3	ⓑ	ⓑ 2	ⓑ	○
	Tailored Transportation Marketing Services: Option D	4	ⓑ	ⓑ	ⓑ	○
LU-1	Healthy Food Retail in Underserved Area	2	ⓑ	⊘	⊘	⊘
LU-2	On-site Affordable Housing: Option A; or	1	⊘	⊘	ⓐ	⊘
	On-site Affordable Housing: Option B; or	2	⊘	⊘	ⓐ	⊘
	On-site Affordable Housing: Option C; or	3	⊘	⊘	ⓑ	⊘
	On-site Affordable Housing: Option D	4	⊘	⊘	ⓑ	⊘
PKG-1	Unbundle Parking: Location A; or	1	ⓑⓟ	ⓑⓟ	ⓑⓟ	○
	Unbundle Parking: Location B; or	2	ⓑⓟ	ⓑⓟ	ⓑⓟ	○
	Unbundle Parking: Location C; or	3	ⓑⓟ	ⓑⓟ	ⓑⓟ	○
	Unbundle Parking: Location D; or	4	ⓑⓟ 4	ⓑⓟ 4	ⓑⓟ	○
	Unbundle Parking: Location E	5	ⓑⓟ	ⓑⓟ	ⓑⓟ	○
PKG-2	Parking Pricing	2	ⓟ 2	ⓟ 2	⊘	○
PKG-3	Parking Cash Out: Non-residential Tenants	2	ⓟ	ⓟ	⊘	○

ⓐ = applicable to land use category.
ⓑ = applicable to land use category, see fact sheets for further details regarding project size and/or location.
ⓟ = applicable to land use catgory only if project includes some parking.
⊘ = not applicable to land use category.
○ = project sponsor can select these measures for land use category D, but will not receive points.

Land Use Category Totals

	A Retail	B Office	C Residential	D Other
Point Subtotal from Page 1:	11	6		3
Point Subtotal from Page 2:	13	17		2
Totals:	24	23		5

TDM COORDINATOR AFFIDAVIT

Planning Code Section 169.5 requires every Development Project subject to the TDM Program to maintain a TDM coordinator. The TDM coordinator's responsibilities are defined further in the Glossary of Terms of the TDM Program Standards. Please visit http://sf-planning.org/tdm-materials-and-resources for more information.

Under penalty of perjury the following declarations are made:

a) The undersigned is authorized by the property owner to be the designated TDM Coordinator for the Life of the Project.

b) The information presented is true and correct to the best of my knowledge.

Signature	Name (Printed)
Daniel A. Frattin	Daniel A. Frattin

Relationship to Project (i.e. Owner, Architect, etc.)	Phone	Email
Agent	415-567-900	dfrattin@reubenlaw.com

For Department Use Only

Application received by Planning Department:

By: _____ Date: _____

EXHIBIT A

TDM Strategy

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Measure Description	Amount required by Code	Amount required by TDM Menu	Comments
ACTIVE-1	Improve Walking Conditions	A	1	1		**Option A:** The property owner shall complete streetscape improvements consistent with the Better Streets Plan and any local streetscape plan so that the public right-of-way is safe, accessible, convenient and attractive to persons walking. PLUS wider sidewalk unless determined to be infeasible or undesirable by City staff AND additional sidewalk elements	Per Better Streets Plan	Better Streets Plan w/recommended sidewalk + 10 additional streetscape elements OR 5 additional elements and extend recommended sidewalk beyond project site OR 5 additional elements and 2 Safety Tools identified in the WalkFirst toolkit if the project is in a High-Injury Corridor	The scale of the project allows many opportunities to enliven the sidewalks surrounding the project. The adjacency of the POPOS area to the sidewalks will further help to achieve the goal of Active – 1.
ACTIVE-2	Bicycle Parking	A	1	1	1	**Option A:** The property owner to provide Class 1 and 2 bicycle parking spaces as required by the Planning Code **Options B-D** exceeds code significantly.	Class 1: 417 spaces Class 2: 107 spaces	Will provide bicycle parking as required by code per TDM Option A.	The project sponsor proposes to provide bicycle parking as required by code per TDM Option A.
ACTIVE-3	Showers and Lockers		1	1	1	The Development Project shall provide at least one shower and at least six clothes lockers for every 30 Class 1 Bicycle Parking spaces, but no fewer than the number of showers and clothes lockers that are required by the Planning Code, if any.	Office: 4 showers + 24 lockers Retail: 2 showers + 12 lockers PDR: 4 showers + 24 lockers	Showers: 417 Class 1 Spaces / 30 = 14 Lockers: 417/30 x 6 = 83	The number of showers and lockers required are dependent on the number of Class 1 bicycle parking spaces dictated by Active – 2.
ACTIVE-4	Bike Share Membership	<1000 ft.	2	0		Owner provides 1 complimentary bike share membership to each full time employee, at least once annually, for the life of the project	N/A		The project sponsor proposes to offer 1/2 the cost of a bike share membership to all full-time retail empoyees. The incentive will be offered for a single bike share program convenient to the project site. The financial reimbursement will be offered once a year at the start of each year to eligible full-time employees. This is not being offered to office employees. The number of eligible office employees is likely to range between 8,000 and 10,000. Offering membership to this population will create an undue cost burden to the project and to future tenants. Also, membership costs are likely to rise and cannot be anticipated over time.
ACTIVE-5A	Bike Repair Station		1	1		Include a bicycle repair station in secure location with freely accessible tools such as those for fixing a flat tire, adjusting a chain, or performing basic bicycle maintenance.	N/A	1 Repair shop will serve site, assume 500 sf	A bicycle repair station will be a useful amenity to the project and it's tenants.

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Measure Description	Amount required by Code	Amount required by TDM Menu	Comments
ACTIVE-5B	Bike Maintenance Services		1	0		The property owner shall offer bicycle maintenance services to each Dwelling Unit and/or employee at least once annually, for 40 years. If requested by the Dwelling unit and/or emloyee, the property ownder shall pay for bicycle maintenance services minimally equivalent to the cost of one annual bicycle tune-up per Dwellin Unit and/or employee.	N/A	Will offer bicycle maintenance services to each retail program full-time employee.	Bicycle maintenance services will be a useful amenity for the project. A voucher for bicycle maintenance at a local bicycle shop convenient to the projct site will be offered once a year at the start of each year to eligible full-time retail employees. Eligible retail employees will be able to request service at the selected shop through the presentation of the voucher and office ID. This is not being offered to office employees. The number of eligible office employees is likely to range between 8,000 and 10,000. Offering membership to this population will create an undue cost burden to the project and to future tenants. Also, maintenance costs are likely to rise and cannot be anticipated over time.
ACTIVE-6	Fleet of Bicycles		0	0		The Development Project shall provide a fleet of bicycles for residents, visitors, and/or employees for their use. The number of bicycles in the fleet shall be equivalent to the number of Class 2 Bicycle parking spaces required by the Planning Code with a minimum of five to be provided.	N/A		Providing a fleet of bicycles is likely to be redundant since the tenant population are likely to have their own bicycles if they are interested in biking. Also, the additional storage space required will incur excessive additional cost in the basement or a reduction of at grade public open space.
ACTIVE-7	Bike Valet Parking		1			For events with more than 1,000 attendees, owner provides bike valet service for at least 20% of attendees	N/A	Hire bicycle valet operator for special events.	Bicycle valet parking for special events will be a helpful service to maintain ease of access to the site at busy times.

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Measure Description	Amount required by Code	Amount required by TDM Menu	Comments
CSHARE-1	Car-share Parking	A	1	1	1	**Option A:** The property owner to provide car-share parking as required by Planning code. **Option B-F** exceed code significantly and in some cases, requires the property owner to set-up and manage a car-share membership system.	17 spaces	To meet code	All project off-street parking is located in the project basement. Due to the high construction cost of the basement, Parking in excess of other revenue generating program will put a large strain on project resources. Additionally, adding greater than 17 car share spaces encourages more automobile traffic to the site, and the project sponsor's goal is to promote pedestrian traffic to the site by way of transit, bicycle, and vanpool trips.
DELIVERY-1	Delivery Supportive Amenities		1	1		The Development Project shall facilitate delivery services by providing an area for receipt of deliveries that offers one of the following: (1) clothes lockers for delivery services, (2) temporary storage for package deliveries, laundry deliveries, and other deliveries, or (3) providing temporary refrigeration for grocery deliveries, and/or including other delivery supportive measures as proposed by the property owner that may reduce Vehicle Miles Traveled by reducing the number of trips that may otherwise have been by single occupancy vehicle.	N/A	2 spaces to serve site. Assume 400 sf at grade. Will require at least 2 full time employee to accept and guard deliveries.	Delivery supportive amenities will be a useful amenity to the project.
DELIVERY-2	Provide Delivery Services		1			The property owner shall provide delivery services on foot, by bicycle or delivery vehicle.	N/A	Will require at least 2 full time employees for coordination and delivery, vehicle(s) and maintenance of vehicles -or- hire outside vendor to manage.	Delivery services will provide support to the project retailers and help connect the project to the neighborhood.
FAMILY-1	Family Amenities					**Option A:** Provide storage for carseats, strollers, cargo bicycles or other large bicycles. Measure B: Provide 1 shopping cart for every 10 units and 1 cargo bicycle for every 20 units.	N/A		Not applicable to this project.
FAMILY-2	On-site Childcare		0	0		Provide on-site childcare to reduce traffic between homes, childcare facilities and workplaces.	N/A		Though the project sponsor would like to offer space for childcare, the space requirements at grade are onerous and will compete with the substantial requirements of the Wholesale Flower Market. It will also compete with on-site POPOS, which will serve as a neighborhood amenity.
FAMILY-3	Family TDM Package					The property owner shall include Carshare-1 option D or E AND Family TDM Amenities 1 and 2.	N/A		Not applicable to this project.
HOV-1	Contributions or Incentives for Sustainable Transportation		0	0		The project owner shall offer contributions equal to the cost of 25, 50, 75, or 100% of a monthly MUNI or "M" pass or the equivalent value in e-cash loaded onto a Clipper Card to each employee or dwelling unit for the life of the project.	N/A		Offering MUNI membership to all full time employees on site will be an undue cost burden to the project. The number of eligible employees is likely to range between 8,000 and 10,000. Also, membership costs are likely to rise and cannot be anticipated over time.

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Measure Description	Amount required by Code	Amount required by TDM Menu	Comments
HOV-2	Shuttle Bus Service		0	0		The Development Project shall provide local shuttle service. The local shuttles will primarily provide service between the project site and regional transit hubs, commercial centers, and/or residential areas. Local shuttle service shall be provided free of charge to residents, tenants (employees), and guests. Shuttle stop locations shall be posted with shuttle schedules (or frequency and hours). **Option A:** Provide 15 minute headways during peak hours and 30 minute off-peak **Option B:** Provide 7.5 minute headways during peak hours and 30 minute off-peak	N/A		The project sponsor is very interested in offering shuttle bus service. This would be a useful amenity for the project and its future tenants. However, the SFMTA has said that they are not supportive of shuttle bus service in this neighborhood. Therefore, shuttle bus service is likely to be excluded from TDM in the Central SoMa Plan.
HOV-3	Vanpool Service	B, G	2	7		For Development Projects with at least 25 employees, the property owner shall implement an employer or building manager-sponsored Vanpool, coordinated by the Development Project's TDM coordinator. The Vanpool will primarily provide service between the project site and locations where Vanpool users live. The property owner shall purchase or lease vans for employee use and pay for mileage and maintenance of the vehicles. Vanpool service shall not replicate Muni transit service.	N/A	Will require vehicles, vehicle maintenance and parking for enough vans to support user commute.	Vanpool service will be a useful amenity for the project and is likley to be highly utilized by future tenants.
INFO-1	Mulimodal Wayfinding Signage		1	1	1	The Development Project shall provide multimodal wayfinding signage that can withstand eather elements (e.g., wind, rain) in key locations. That is, the signs shall be located externally and/ or internally so that the residents, tenants, employees and visitors are directed to transportation services and infrastructure, including: 1) transit, 2) bike share, 3) car-share parking, 4) bicycle parking and amenities (including repair stations and fleets), 5) showers and lockers, 6) taxi stands, 7) shuttle/carpool/Vanpool pick-up/drop-off locations. Wayfinding signage shall meet City standards for any on-street wayfinding signage, in particular for bicycle and car-share parking, and shall meet best practices for any interior wayfinding.	N/A	Can be designed as part of general on-site wayfinding signage.	This is easily incorporated into signage that will be needed for the project. It is especially useful considering the proximity to the future Central SoMa line, Caltrain, and local bus stops.
INFO-2	Real Time Transportation Information Displays		1	1	1	Provide real time transportation information on displays in prominent locations throughout the project site.	N/A	Will be designed to serve entire site. Assume 3 locations	This is easily incorporated into signage that will be needed for the project. It is especially useful considering the proximity to the future Central SoMa line, Caltrain, and local bus stops.

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Measure Description	Amount required by Code	Amount required by TDM Menu	Comments
INFO-3	Tailored Transportation Marketing Services	B, C	3	2		**OPTION B:** Provide individualized, tailored marketing and communication campaigns to encourage use of sustainable transportation modes, including promotions and welcome packets AND personal consultation for each new resident/employee AND a request for a commitment to try new transportation options. A commitment could include a pledge, for example, to try transit, carpooling, bicycling, walking, etc. within the first month of moving to or beginning employment at the project site. **OPTION C:** Provice all of Option B AND **Provide one-time financial incentives** at least equivalent to 25 percent of the cost of a monthly Muni only "M" pass, or equivalent value in e-cash loaded onto a Clipper Card, per employee. - enroll tenants in a trip tracking app - provide employers with access to an expert consultant for help in developing new policies.	N/A	Option B: Provide individualized, tailored marketing and communication campaigns with personal consultations for eacn new employee and Option C: Add financial incentives to all required by Option B.	Tailored Marketing Services will be a useful amenity for the project. The financial incentive will be offered to retail full-time employees in the form of a financial reimbursement for 25% of the cost of a Muni "M" pass only. The financial incentive will be restricted to retail employees. The office employee population size is likely to create a demand that will strain project resources and put an undue burden on the project and on future tenants. This strain will be even greater as Muni costs are likely to rise over time at a rate that cannot be forseen.
LU-1	Healthy food Retail in Underserved Area					For Development Projects located in an underserved neighborhood, as determined by Healthy Retail SF, the property owner shall demonstrate the availability of healthy food, as determined by the Healthy Retail SF program.	N/A		Not applicable in this neighborhood.
LU-2	On-site Affordable Housing					The Development Project shall include on-site Affordable Housing, as defined in Planning Code Section 4151, as research indicates that Affordable Housing units generate fewer vehicle trips than market-rate housing units.	N/A		Not applicable to this project.

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420

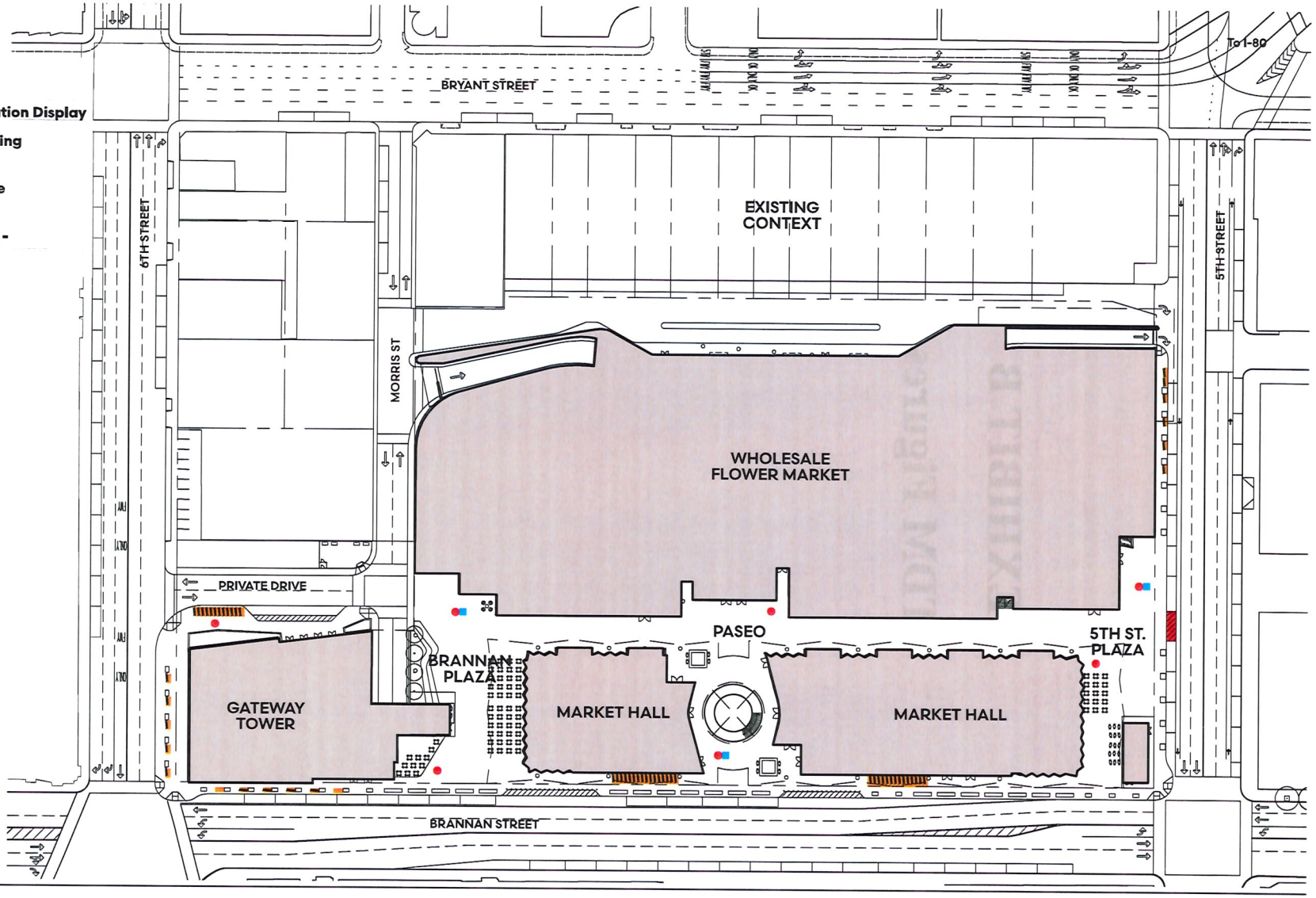
Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Measure Description	Amount required by Code	Amount required by TDM Menu	Comments
PKG-1	Unbundled Parking	D	4	4		All Accessory Parking spaces shall be leased or sold separately from the rental or purchase fees for use for the Life of the Development Project, so that residents or tenants have the option of renting or buying a parking space at an additional cost, and would, thus, experience a cost savings if they opt not to rent or purchase parking.	N/A	Parking agreement must be leased or sold as part of a separate agreement.	Project parking can be unbundled and leased under separate agreements.
PKG-2	Short Term Daily Parking Provision		2	2		Parking rates or passes must be daily. No weekly, monthly, or annual parking passes	Required by code section 155(g).	Parking rates will be restricted to short term daily parking rates as required by code.	Project parking will not be discounted for longer term parking.
PKG-3	Parking Cash-out		0	0		Any tenant employer that subsidizes parking for its employees shall provide all employees with a choice of forgoing any subsidized/free parking for a cash payment equivalent to the cost of the parking space to the employer. Employers shall promote the program to all employees eligible to receive parking at a subsidized level.	N/A		The project sponsor is declining this option. Offering parking cash-out will be an undue cost burden to the project.
PKG-4	Parking Supply					The Development Project shall provide off-street private vehicular parking (Accessory Parking) in an amount no greater than the off-street parking rate for the neighborhood (neighborhood parking rate), based on the transportation analysis zone for the project site.	N/A		Not applicable to this project. The number of parking spaces permitted by code substantially exceeds the maximum allowed to receive points.
	Total Points Achieved		**24**	**23**	**5**				
	Points Required at 100%		32	31	3				
	Points Required at 75%		24	23	2				

EXHIBIT B

TDM Figures

LEGEND

- Real-time Transportation Display
- Multi-Modal Wayfinding
- Proposed Class II Bike Parking at grade. Additional Spaces Located in Basement - See B1 Level Plan.



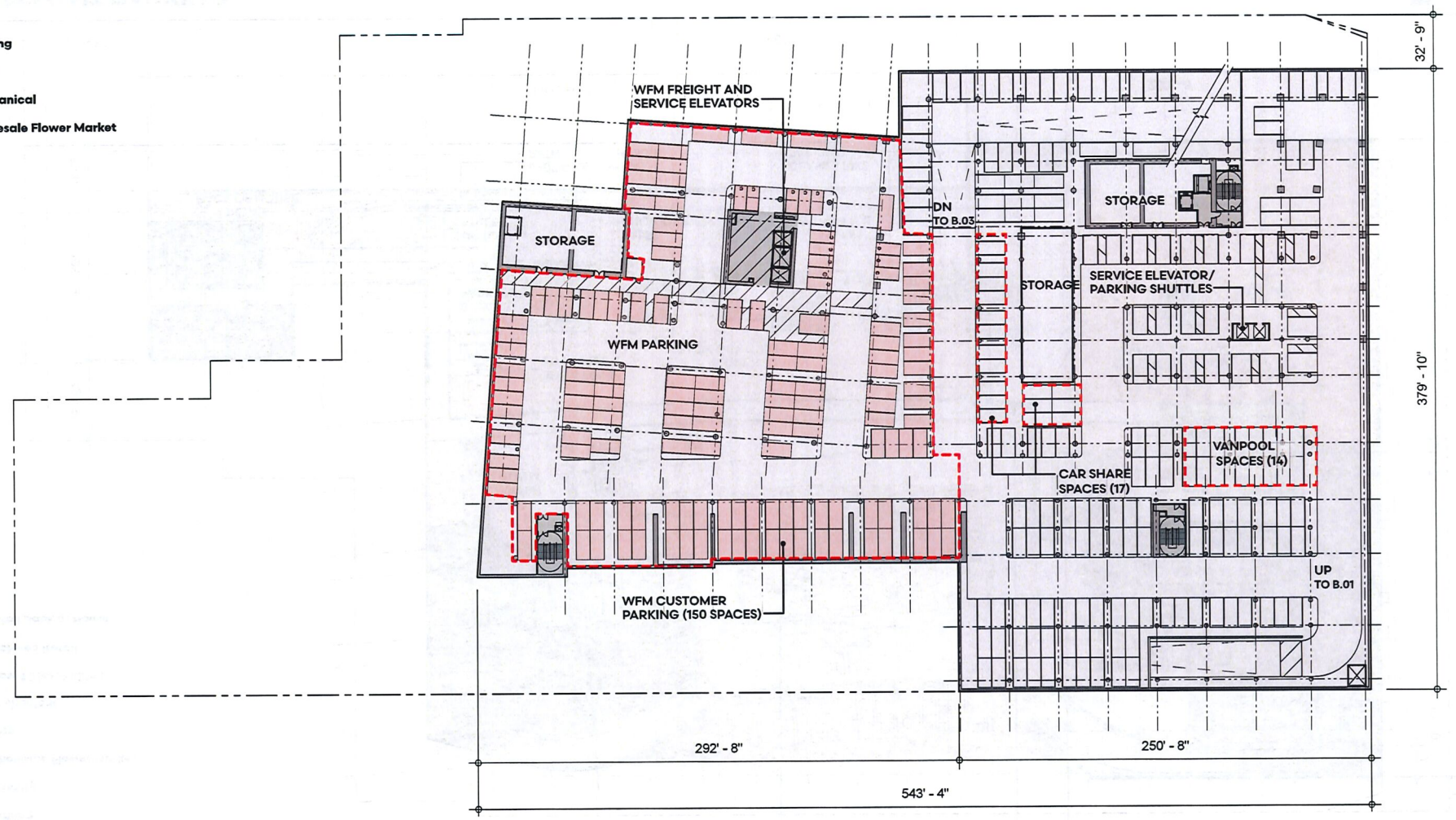
SITE PLAN

N.T.S.

KILROY

LEGEND

- Parking
- Core
- Mechanical
- Wholesale Flower Market



B2 BASEMENT PARKING

1" = 60'-0"

North

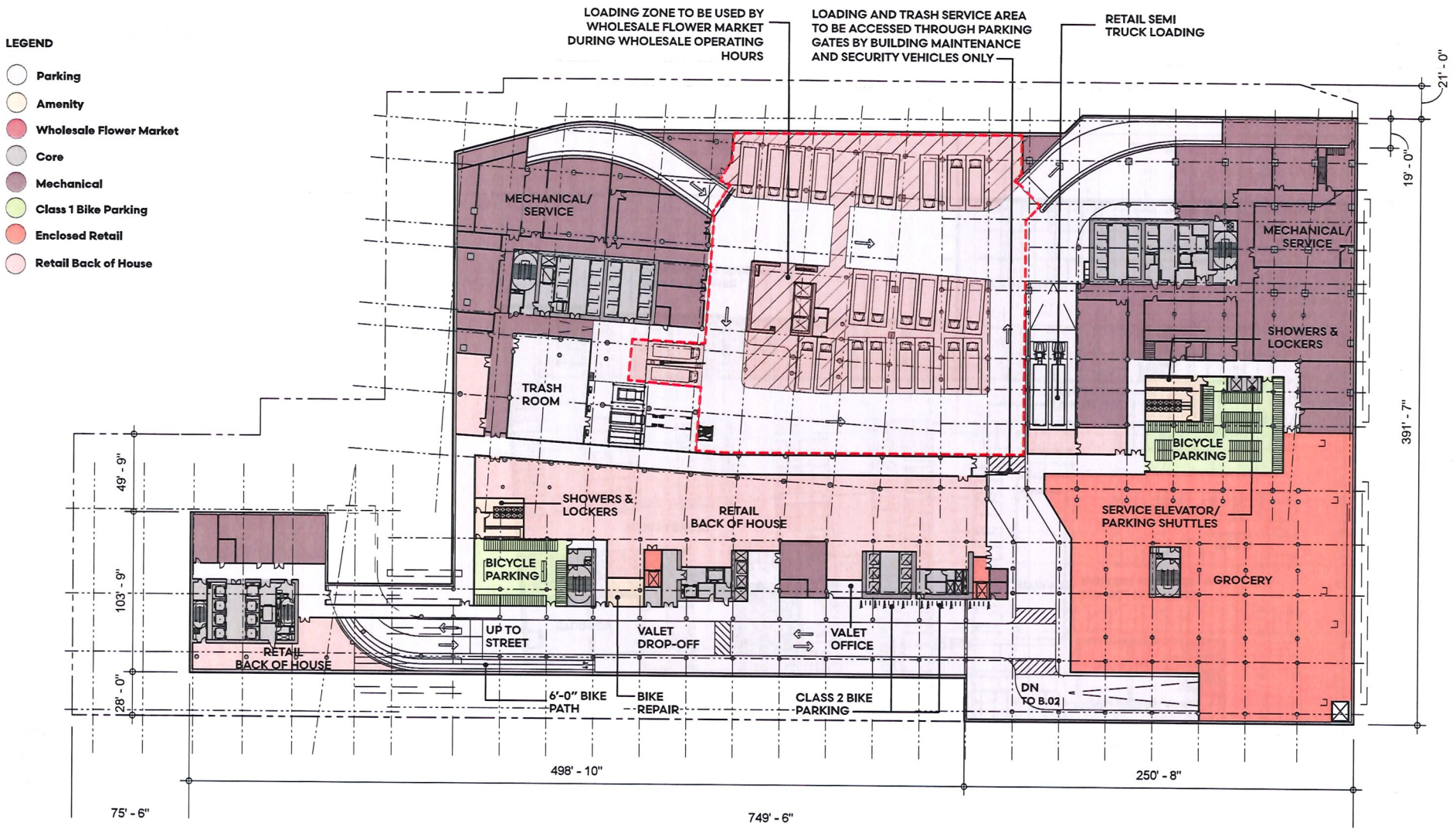
KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

SF FLOWER MART 180615 17

461

424



B1 BASEMENT PARKING

1" = 60'-0"

North

KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

SF FLOWER MART 180615 18

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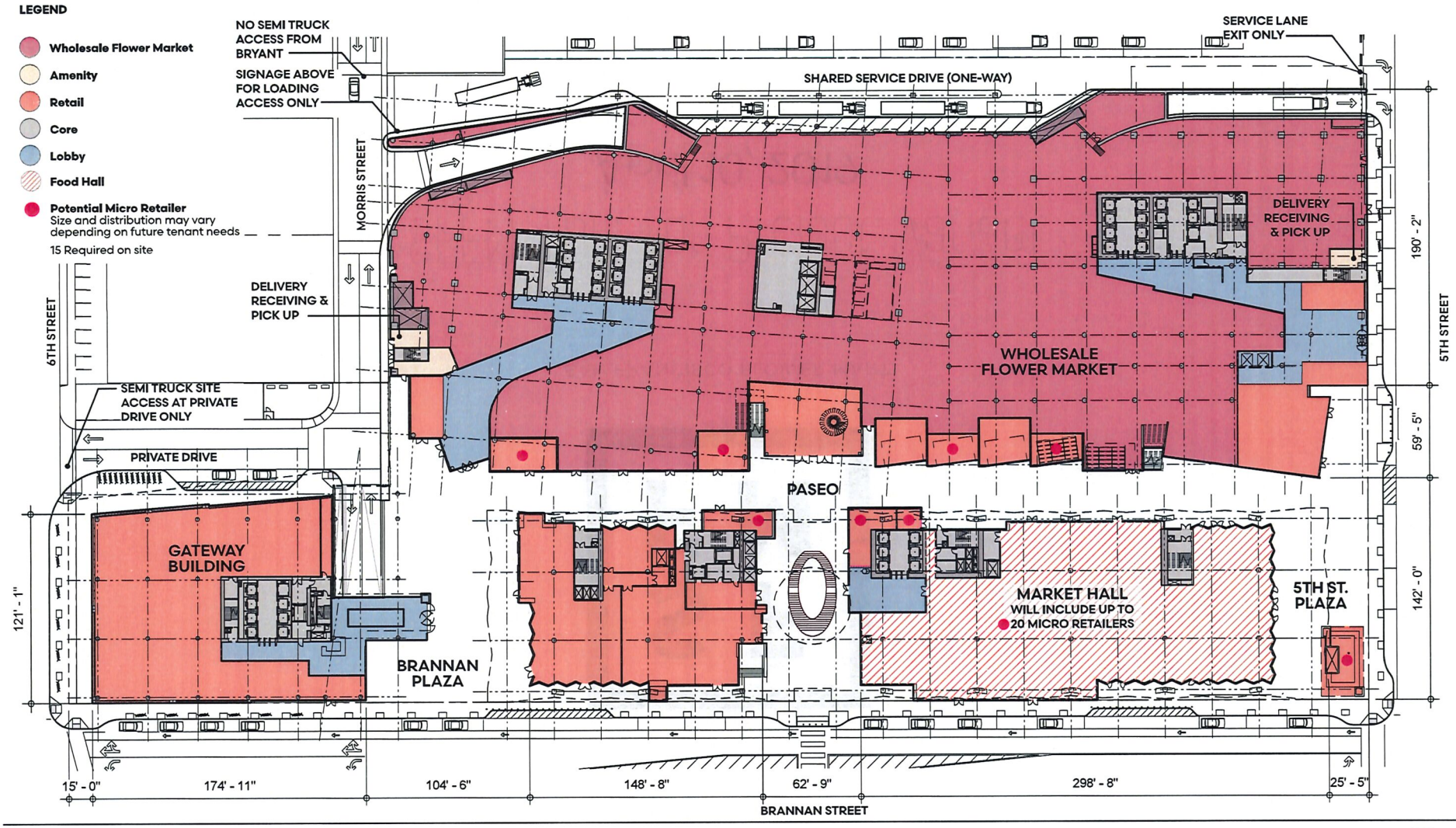
425



GROUND FLOOR PLAN

1" = 60'-0"

KILROY

North

EXHIBIT J.2

SAN FRANCISCO FLOWER MART

SFFM TDM for Project Variant

April 10, 2019

PROJECT VARIANT 1: WITHOUT FLOWER MART (BLOCKS BUILDING GROUND FLOOR ALTERNATIVE)

TDM Points, Program, and Quantities

TRANSPORTATION DEMAND MANAGEMENT PROGRAM

TDM PROGRAM POINTS REQUIRED (75% of Required)	Current Project Planning	Project Variant w/o WFM
Retail	24	24
Office	23	23
PDR	2	2

PERMITTED PARKING

Program	gfa	ofa		Spaces
Retail	90,976	53,920	1:1500 gfa	61
Office	2,061,380	1,997,829	1:3500 ofa	571
			Subtotal	**632**

CAR SHARE

	Spaces
Total Required	13

VANPOOL

	Spaces
Total Proposed	12
Spaces Total	**657**

BICYCLE PARKING

	Class I	Class II
ACTIVE-2, OPTION A	407	86

SHOWERS & LOCKERS

	Showers	Lockers
ACTIVE-3	14	84

BICYCLE REPAIR STATION

	Locations
500 SF	2

DELIVERY SUPPORTIVE AMENITIES

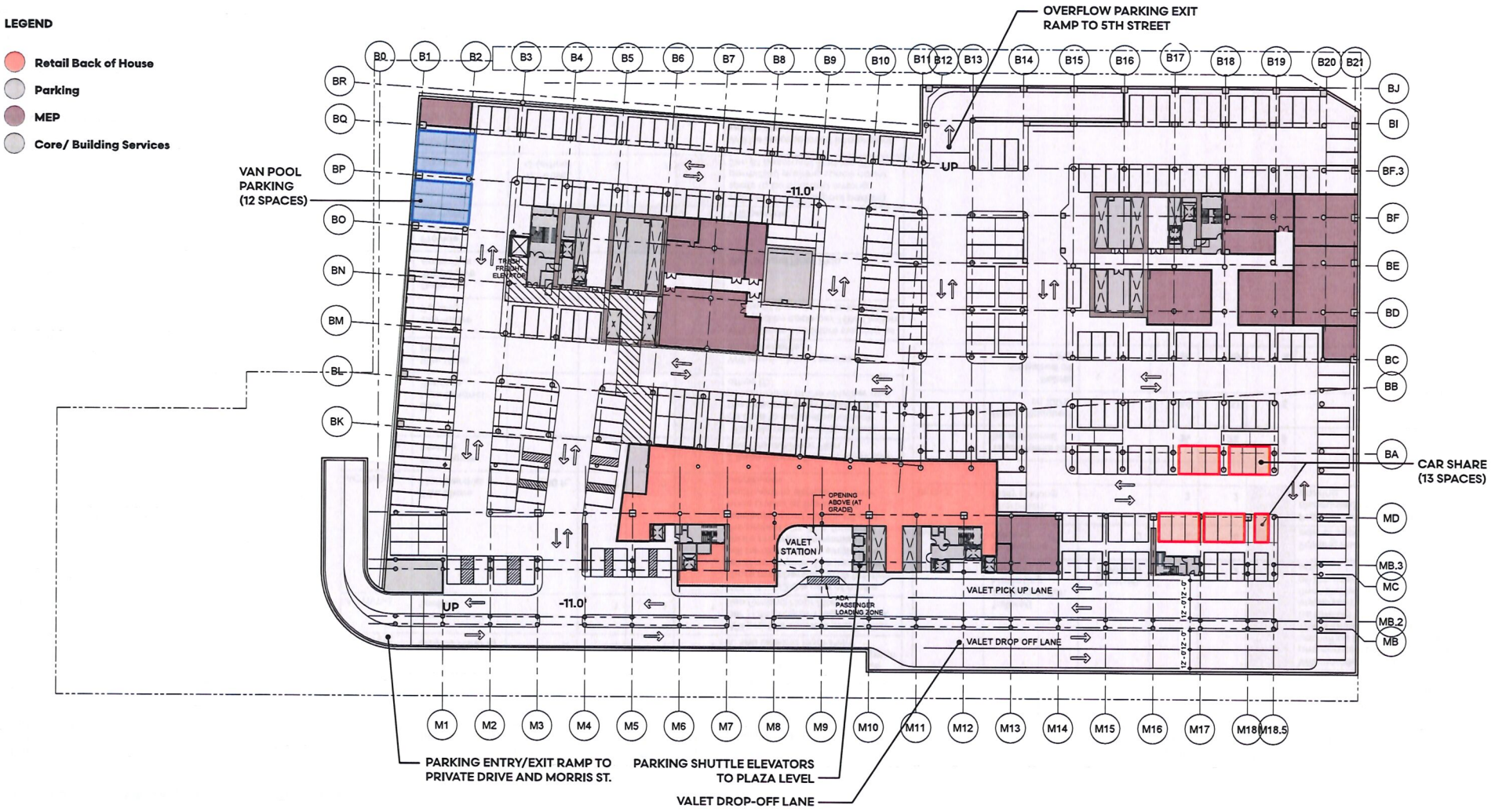
	Locations
100 SF	2

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Provided to Meet TDM
ACTIVE-1	Improve Walking Conditions	A	1	1		Better Streets Plan w/ recommended sidewalk (does not align with SFMTA) + 10 additional streetscape elements.
ACTIVE-2	Bicycle Parking	A	1	1	1	Will provide bicycle parking as required by code per TDM Option A. See Ground Floor Plan.
ACTIVE-3	Showers and Lockers		1	1	1	Will provide showers and lockers per TDM program requirements. See Ground Floor Plan.
ACTIVE-4	Bike Share Membership	<1000 ft.	2	0		Will offer 1/2 the cost of a bike share membership to all full-time retail empoyees. The incentive will be offered for a single bike share program convenient to the project site. The financial reimbursement will be offered once a year at the start of each year to eligible full-time employees.
ACTIVE-5A	Bike Repair Station		1	1		2 Repair shops for employee use. See Ground Floor Plan.
ACTIVE-5B	Bike Maintenance Services		1	0		Eligible retail employees will be able to request service at the selected shop through the presentation of the voucher and office ID.
ACTIVE-7	Bike Valet Parking		1			Will require hiring service for special events.
CSHARE-1	Car-share Parking	A	1	1	1	Will provide car-share parking as required by code per TDM Option A. See B1 Basement Parking Plan.
DELIVERY-1	Delivery Supportive Amenities		1	1		See Ground Floor Plan.
DELIVERY-2	Provide Delivery Services		1			Will provide.
HOV-3	Vanpool Service	B (retail), G (office)	2	7		Will provide 12 Vanpool parking spots to be counted among permitted parking space count. See B1 Basement Parking Plan.
INFO-1	Mulimodal Wayfinding Signage		1	1	1	Will be incorporated into project wayfinding signage. See Ground Floor Plan for general locations.
INFO-2	Real Time Transportation Information Displays		1	1	1	
INFO-3	Tailored Transportation Marketing Services	C (retail), B (office)	3	2		

Measure Title	Measure Name	Option Selected	Retail Points	Office Points	PDR Points	Provided to Meet TDM
INFO-2	Real Time Transportation Information Displays		1	1	1	Will provide 3 locations. See Ground Floor Plan for general locations.
INFO-3	Tailored Transportation Marketing Services	C (retail), B (office)	3	2		Will provide marketing materials and consultations to all new retail and office full-time employees. The financial incentive will be offered to retail full-time employees in the form of a financial reimbursement for 25% of the cost of a Muni "M" pass only.
PKG-1	Unbundled Parking	D	4	4		Parking must be leased or sold as part of separate agreement.
PKG-2	Short-term Daily Parking		2	2		Project parking will not be discounted for longer term parking.
	Total Points to be Achieved		**24**	**23**	**5**	
	Points Required at 100%		32	31	3	
	Points Required at 75%		**24**	**23**	**2**	

PROJECT VARIANT 1: WITHOUT FLOWER MART (BLOCKS BUILDING GROUND FLOOR ALTERNATIVE)

B1 Level Basement - Car Share and Vanpool Parking Locations



PROJECT VARIANT 1: WITHOUT FLOWER MART (BLOCKS BUILDING GROUND FLOOR ALTERNATIVE)

TDM Amenity Locations at Street Level

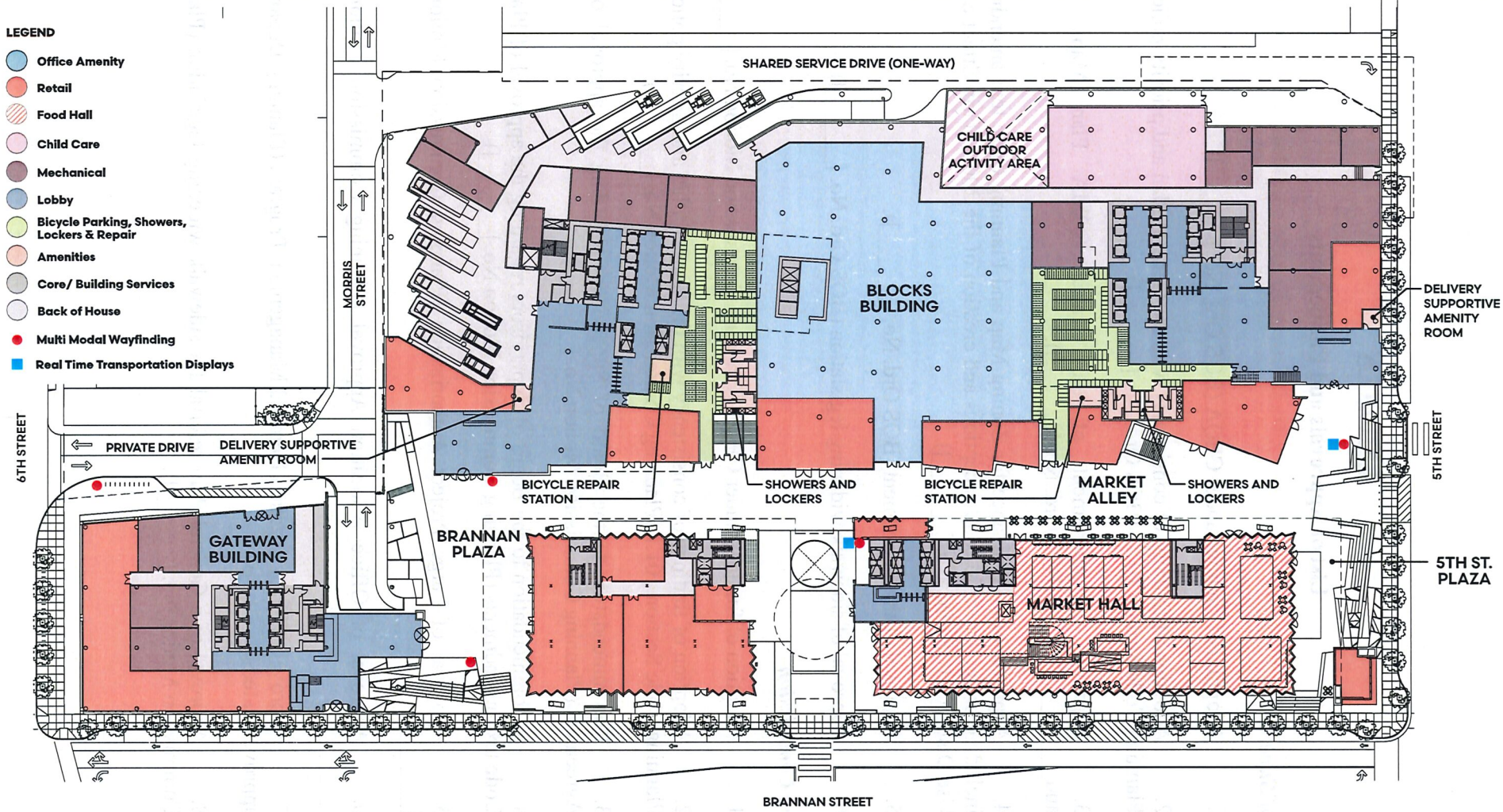


EXHIBIT K

List of Approvals and Entitlements

Board of Supervisors

1. Adoption of findings under CEQA (BOS Ord. No. [_____]).

2. Adoption of findings of consistency with the General Plan and priority policies of Planning Code Section 101.1 (BOS Ord. No. [_____]).

3. Approval of amendment of the Central SOMA Plan Maps _____ and_____ (BOS Ord. No. [_____]).

4. Approval of an ordinance for Zoning Map and Planning Code text amendments, including project-specific code exceptions and creation of the 2000 Marin Street Special Use District (BOS Ord. No. [_____]).

5. Approval of this Agreement (BOS Ord. No. [_____]).

6. Approval of sidewalk widening legislation (BOS Ord. No. [_____]).

Planning Commission

1. Adoption of findings under CEQA (Planning Commission Motion No. [_____]).

2. Adoption of findings of consistency with the General Plan and priority policies of Planning Code Section 101.1 (Planning Commission Motion No. [_____]).

3. Recommendation to the Board of Supervisors regarding the approval of this Agreement (Planning Commission Motion No. [_____]).

4. Recommendation to the Board of Supervisors regarding the approval of Planning Code text amendments (Planning Commission Motion No. [_____])

5. Approval of Large Project Authorization (Planning Commission Motion No. [_____]).

6. Approval of Office Allocation Approval (Planning Commission Motion No. [_____]).

7. Approval of Transportation Demand Management Program (Planning Department approval, dated [_____]).

8. Approval of a General Plan referral for sidewalk widening legislation (Planning Commission Motion No. [_____]).

EXHIBIT L

MMRP

MITIGATION MEASURES

Cultural Resources

Project Mitigation Measure 1: Documentation of Historical Resource(s) [Implementing Central SoMa Plan PEIR Mitigation Measure M-CP-1b]. The project sponsor shall undertake historical documentation prior to the issuance of demolition or site permits. To document the buildings more effectively, the sponsor shall prepare Historic American Buildings Survey (HABS)-level photographs and an accompanying HABS Historical Report, which shall be maintained on site, as well as in the appropriate repositories, including but not limited to, the San Francisco Planning Department, San Francisco Architectural Heritage, the San Francisco Public Library, and the Northwest Information Center. The contents of the report shall include an architectural description, historical context, and statement of significance, per HABS reporting standards. The documentation shall be undertaken by a qualified professional who meets the standards for history, architectural history, or architecture (as appropriate), as set forth by the Secretary of the Interior's Professional Qualification Standards (36 Code of Federal Regulations, Part 61). HABS documentation shall provide the appropriate level of visual documentation and written narrative based on the importance of the resource (types of visual documentation typically range from producing a sketch plan to developing measured drawings and view camera (4x5) black and white photographs). The appropriate level of HABS documentation and written narrative shall be determined by the Planning Department's Preservation staff. The report shall be reviewed by the Planning Department's Preservation staff for completeness. In certain instances, Department Preservation staff may request HABS-level photography, a historical report, and/or measured architectural drawings of the existing building(s).

Project Mitigation Measure 2: Oral Histories [Implementing Central SoMa Plan PEIR Mitigation Measure M-CP-1c]. The project sponsor shall undertake an oral history project prior to demolition or adverse alteration of the resource that includes interviews of people such as residents, past owners, or former employees. The project shall be conducted by a professional historian in conformance with the Oral History Association's Principles and Standards (http://alpha.dickinson/edu/oha/pub_eg.html). In addition to transcripts of the interviews, the oral history project shall include a narrative project summary report containing an introduction to the project, a methodology description, and brief summaries of each conducted interview. Copies of the completed oral history project shall be submitted to the San Francisco Public Library, Planning Department, or other interested historical institutions.

Project Mitigation Measure 3: Interpretive Program [Implementing Central SoMa Plan PEIR Mitigation Measure M-CP-1d]. The project sponsor shall work with Department Preservation staff or other qualified professional to institute an interpretive program on site that references the property's history and the contribution of the historical resource to the broader neighborhood or historic district. An example of an interpretive program is the creation of historical exhibits, incorporating a display featuring historic photos of the affected resource and a description of its

historical significance, in a publicly accessible location on the project site. This may include a website or publicly-accessible display. The contents of the interpretative program shall be determined by the Planning Department Preservation staff. The development of the interpretive displays should be overseen by a qualified professional who meets the standards for history, architectural history, or architecture (as appropriate) set forth by the *Secretary of the Interior's Professional Qualification Standards* (36 Code of Federal Regulations, Part 61). An outline of the format, location and content of the interpretive displays shall be reviewed and approved by the San Francisco Planning Department's Preservation staff prior to issuance of a demolition permit or site permit. The format, location and content of the interpretive displays must be finalized prior to issuance of any Building Permits for the project.

Project Mitigation Measure 4: Video Recordation [Implementing Central SoMa Plan PEIR Mitigation Measure M-CP-1e]. The project sponsor shall work with Department Preservation staff or other qualified professional, to undertake video documentation of the affected historical resource and its setting. The documentation shall be conducted by a professional videographer, preferably one with experience recording architectural resources. The documentation shall be narrated by a qualified professional who meets the standards for history, architectural history, or architecture (as appropriate), as set forth by the Secretary of the Interior's Professional Qualification Standards (36 Code of Federal Regulations, Part 61). The documentation shall use visuals in combination with narration about the materials, construction methods, current condition, historic use, and historic context of the historical resource.

Archival copies of the video documentation shall be submitted to the Planning Department, and to repositories including but not limited to the San Francisco Public Library, Northwest Information Center, and California Historical Society. This mitigation measure would supplement the traditional HABS documentation, and would enhance the collection of reference materials that would be available to the public and inform future research.

The video documentation shall be reviewed and approved by the San Francisco Planning Department's Preservation staff prior to issuance of a demolition permit or site permit or issuance of any Building Permits for the project.

Project Mitigation Measure 5: Protect Historical Resources from Adjacent Construction Activities [Implementing Central SoMa Plan PEIR Mitigation Measure M-CP-3a]. Two historical resources located within 100 feet of the project site have been identified—563–565 Sixth Street and 701 Bryant Street. As these historical resources could be adversely affected by construction-related activities on the project site, the project sponsor shall incorporate into construction specifications for the proposed project a requirement that the construction contractor(s) use all feasible means to avoid damage to adjacent and nearby historic buildings. Such methods may include maintaining a safe distance between the construction site and the historic buildings (as identified by the Planning Department Preservation staff), using construction techniques that reduce vibration (such as using concrete saws instead of jackhammers or hoe-rams to open excavation trenches, the use of non-vibratory rollers, and hand excavation), appropriate excavation shoring methods to prevent movement of adjacent structures, and providing adequate security to minimize risks of vandalism and fire. No measures need be applied if no vibratory equipment would be employed or if there are no historic buildings within 100 feet of the project site.

Project Mitigation Measure 6: Construction Monitoring Program for Historical Resources [Implementing Central SoMa Plan PEIR Mitigation Measure M-CP-3b]. For those historical resources identified in PEIR Mitigation Measure M-CP-3a, including 563–565 Sixth Street and 701 Bryant Street, and where heavy equipment would be used on a subsequent development project, the project sponsor of such a project shall undertake a monitoring program to minimize damage to historic buildings and to ensure that any such damage is documented and repaired. The monitoring program, which shall apply within 100 feet where pile driving would be used and within 25 feet otherwise, shall include the following components, subject to access being granted by the owner(s) of adjacent properties, where applicable. Prior to the start of any ground-disturbing activity, the project sponsor shall engage a historic architect or qualified historic preservation professional to undertake a pre-construction survey of historical resource(s) identified by the San Francisco Planning Department within 125 feet of planned construction to document and photograph the buildings' existing conditions. Based on the construction and condition of the resource(s), the consultant shall also establish a standard maximum vibration level that shall not be exceeded at each building, based on existing condition, character-defining features, soils conditions, and anticipated construction practices (a common standard is 0.2 inch per second, peak particle velocity). To ensure that vibration levels do not exceed the established standard, the project sponsor shall monitor vibration levels at each structure and shall prohibit vibratory construction activities that generate vibration levels in excess of the standard. Should owner permission not be granted, the project sponsor shall employ alternative methods of vibration monitoring in areas under control of the project sponsor.

Should vibration levels be observed in excess of the standard, construction shall be halted and alternative construction techniques put in practice, to the extent feasible. (For example, pre-drilled piles could be substituted for driven piles, if feasible based on soils conditions; smaller, lighter equipment might be able to be used in some cases.) The consultant shall conduct regular periodic inspections of each building during ground-disturbing activity on the project site. Should damage to either building occur, the building(s) shall be remediated to its pre-construction condition at the conclusion of ground-disturbing activity on the site.

Project Mitigation Measure 7: Archeological Testing, Monitoring, Data Recovery, Accidental Discovery and Reporting [Implementing Central SoMa Plan PEIR Mitigation Measure M-CP-4a]. As part of project implementation of Central SoMa Plan PEIR Mitigation Measure M-CP-4a, the Planning Department's archeologist conducted a Preliminary Archeology Review (PAR) of the project site and the proposed project. The PAR determined that the project would have the potential to adversely affect an archeological resource, and the Planning Department's archeologist required preparation of a project-specific Archeological Research Design and Treatment Plan (ARDTP). The ARDTP determined new construction for the proposed project would include ground disturbance in areas of high archeological sensitivity, and there is a high potential to encounter legally significant archeological resources.[1] Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of an archaeological consultant from the rotational Department Qualified Archaeological Consultants List (QACL)

[1] San Francisco Planning Department, Archeological Research Design and Treatment Plan Addendum for the proposed 610–698 Brannan Street, 548 Fifth Street, 149 Morris Street (Flower Mart) Project, prepared by Environmental Science Associates, November 2017.

maintained by the Planning Department archaeologist. The project sponsor shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall provide accidental discovery training to the construction crew regarding protocols for protection of resources discovered during construction; and shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines section 15064.5(a) and (c).

Consultation with Descendant Communities: On discovery of an archeological site associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archaeological Resources Report shall be provided to the representative of the descendant group.

Archeological Testing Program: The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

A. The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or

B. A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archeological Monitoring Program: If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context;

- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;

- The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;

- The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;

- If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving or deep foundation activities (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving or deep foundation activities may affect an archeological resource, the pile driving or deep foundation activities shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO, as detailed below.

Archeological Data Recovery Program: The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall

identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains, Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal Laws, including immediate notification of the Office of the Chief Medical Examiner of the City and County of San Francisco and in the event of the Medical Examiner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Public Resources Code section 5097.98). The ERO shall also be immediately notified upon discovery of human remains. The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond six days after the discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing State regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such as agreement has been made or, otherwise, as determined by the archeological consultant and the ERO. If no agreement is reached State

regulations shall be followed including the reburial of the human remains and associated burial objects with appropriate dignity on the property in a location not subject to further subsurface disturbance (Public Resources Code section 5097.98).

Accidental Discovery: The project sponsor shall distribute the Planning Department archeological resource "ALERT" sheet to the project prime contractor; to any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); or utilities firm involved in soils disturbing activities within the project site. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel including, machine operators, field crew, pile drivers, supervisory personnel, etc.

In addition, the archaeological consultant shall provide a preconstruction training shall be provided to all construction personnel performing or managing soils disturbing activities prior to the start of soils disturbing activities on the project. The purpose of the training is to enable personnel to identify archaeological resources that may be encountered and to instruct them on what to do if a potential discovery occurs. Images of expected archeological resource types and archeological testing and data recovery methods should be included in the training.

The project sponsor shall provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractor(s), and utilities firm) to the ERO confirming that all field personnel have received copies of the Alert Sheet and have taken the preconstruction training.

Should any indication of an archeological resource be encountered during any soils disturbing activity of the project when the qualified archaeologist is not present, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils disturbing activities in the vicinity of the discovery and protect the find in place until the ERO has determined what additional measures should be undertaken.

Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

Project Mitigation Measure 8: Project-Specific Tribal Cultural Resource Assessment [Implementing Central SoMa Plan PEIR Mitigation Measure M-CP-5]. The project shall be reviewed for the potential to affect a tribal cultural resource in tandem with the preliminary

archeology review of the project by the San Francisco Planning Department archeologist. If preservation staff determines that the proposed project may have a potential significant adverse effect on a tribal cultural resource, then the following shall be required as determined warranted by the ERO.

If staff determines that preservation-in-place of the tribal cultural resource is both feasible and effective, based on information provided by the applicant regarding feasibility and other available information, then the project archeological consultant shall prepare an archeological resource preservation plan. Implementation of the approved plan by the archeological consultant shall be required when feasible. If staff determines that preservation–in-place of the Tribal Cultural Resource is not a sufficient or feasible option, then the project sponsor shall implement an interpretive program of the resource in coordination with affiliated Native American tribal representatives. An interpretive plan produced in coordination with affiliated Native American tribal representatives, at a minimum, and approved by the ERO shall be required to guide the interpretive program. The plan shall identify proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.

Transportation and Circulation

Project Mitigation Measure 9: Transit Accessibility [Implementing Central SoMa PEIR Mitigation Measure M-TR-3a]. To enhance transit accessibility, the Planning Department and the SFMTA shall establish a coordinated planning process to link land use planning and development in Central SoMa to transit and other sustainable mode planning. This shall be achieved for the project site through the following measure:

It shall be the responsibility of the project sponsor to ensure that recurring vehicle queues do not substantially affect public transit operations on nearby public rights-of-way. A vehicle queue is defined as one or more vehicles (destined to the parking facility) blocking any portion of any public street, alley or sidewalk for a consecutive period of three minutes or longer on a daily or weekly basis. If a recurring queue occurs, the owner/operator of the parking facility shall employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the parking facility, the street(s) to which the facility connects, and the associated land uses (if applicable). Suggested abatement methods include but are not limited to the following: redesign of facility to improve vehicle circulation and/or on-site queue capacity; employment of parking attendants; installation of LOT FULL signs with active management by parking attendants; use of valet parking or other space-efficient parking techniques; use of off-site parking facilities or shared parking with nearby uses; use of parking occupancy sensors and signage directing drivers to available spaces; transportation demand management strategies such as the listed in the San Francisco planning code TDM Program.

If the Planning Director, or his or her designee, suspects that a recurring queue is present, the Department shall notify the property owner in writing. Upon request, the owner/operator shall hire a qualified transportation consultant to evaluate the conditions at the site for no less than seven

days. The consultant shall prepare a monitoring report to be submitted to the Department for review. If the Department determines that a recurring queue does exist, the facility owner/operator shall have 90 days from the date of the written determination to abate the queue.

Project Mitigation Measure 10: Construction Management Plan and Construction Coordination [Implementing Central SoMa PEIR Mitigation Measure M-TR-9]. Construction Management Plan—The project sponsor shall develop and, upon review and approval by the SFMTA and Public Works, implement a Construction Management Plan, addressing transportation-related circulation, access, staging and hours of delivery. The Construction Management Plan would disseminate appropriate information to contractors and affected agencies with respect to coordinating construction activities to minimize overall disruption and ensure that overall circulation in the project area is maintained to the extent possible, with particular focus on ensuring transit, pedestrian, and bicycle connectivity. The Construction Management Plan would supplement and expand, rather than modify or supersede, any manual, regulations, or provisions set forth by the SFMTA, Public Works, or other City departments and agencies, and the California Department of Transportation.

If construction of the proposed project is determined to overlap with nearby adjacent project(s) as to result in transportation-related impacts, the project sponsor or its contractor(s) shall consult with various City departments such as the SFMTA and Public Works, and other interdepartmental meetings as deemed necessary by the SFMTA, Public Works, and the Planning Department, to develop a Coordinated Construction Management Plan. The Coordinated Construction Management Plan, to be prepared by the contractor, would be reviewed by the SFMTA and would address issues of circulation (traffic, pedestrians, and bicycle), safety, parking and other project construction in the area. Based on review of the construction logistics plan, the project may be required to consult with SFMTA Muni Operations prior to construction to review potential effects to nearby transit operations.

The Construction Management Plan and, if required, the Coordinated Construction Management Plan, shall include, but not be limited to, the following:

- *Restricted Construction Truck Access Hours*—Limit construction truck movements during the hours between 7:00 and 9:00 a.m. and between 4:00 and 7:00 p.m., and other times if required by the SFMTA, to minimize disruption to vehicular traffic, including transit during the a.m. and p.m. peak periods.

- *Construction Truck Routing Plans*—Identify optimal truck routes between the regional facilities and the project site, taking into consideration truck routes of other development projects and any construction activities affecting the roadway network.

- *Coordination of Temporary Lane and Sidewalk Closures*—The project sponsor shall coordinate travel lane closures with other projects requesting concurrent lane and sidewalk closures through interdepartmental meetings, to minimize the extent and duration of requested lane and sidewalk closures. Travel lane closures shall be minimized especially along transit and bicycle routes, so as to limit the impacts to transit service and bicycle circulation and safety.

- *Maintenance of Transit, Vehicle, Bicycle, and Pedestrian Access*—The project sponsor/construction contractor(s) shall meet with Public Works, SFMTA, the Fire

Department, Muni Operations and other City agencies to coordinate feasible measures to include in the Coordinated Construction Management Plan to maintain access for transit, vehicles, bicycles and pedestrians. This shall include an assessment of the need for temporary transit stop relocations or other measures to reduce potential traffic, bicycle, and transit disruption and pedestrian circulation effects during construction of the project.

- *Carpool, Bicycle, Walk and Transit Access for Construction Workers*—The construction contractor shall include methods to encourage carpooling, bicycling, walk and transit access to the project site by construction workers (such as providing transit subsidies to construction workers, providing secure bicycle parking spaces, participating in free-to-employee ride matching program from www.511.org, participating in emergency ride home program through the City of San Francisco (www.sferh.org), and providing transit information to construction workers).

- *Construction Worker Parking Plan*—The location of construction worker parking shall be identified as well as the person(s) responsible for monitoring the implementation of the proposed parking plan. The use of on-street parking to accommodate construction worker parking shall be discouraged. All construction bid documents shall include a requirement for the construction contractor to identify the proposed location of construction worker parking. If on site, the location, number of parking spaces, and area where vehicles would enter and exit the site shall be required. If off-site parking is proposed to accommodate construction workers, the location of the off-site facility, number of parking spaces retained, and description of how workers would travel between off-site facility and project site shall be required.

- *Project Construction Updates for Adjacent Businesses and Residents*—To minimize construction impacts on access for nearby institutions and businesses, the project sponsor shall provide nearby residences and adjacent businesses with regularly-updated information regarding project construction, including construction activities, peak construction vehicle activities (e.g., concrete pours), travel lane closures, and lane closures. At regular intervals to be defined in the Construction Management Plan and, if necessary, in the Coordinated Construction Management Plan, a regular email notice shall be distributed by the project sponsor that shall provide current construction information of interest to neighbors, as well as contact information for specific construction inquiries or concerns.

Noise

Project Mitigation Measure 11: General Construction Noise Control Measures [Implementing Central SoMa Plan PEIR Mitigation Measure M-NO-2a]. The project sponsor shall undertake the following:

- Require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds), wherever feasible.

- Require the general contractor to locate stationary noise sources (such as compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and to construct barriers around such sources and/or the construction site, which could

reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, if feasible.

- Require the general contractor to use impact tools (e.g., jack hammers, pavement breakers, and rock drills) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which could reduce noise levels by as much as 10 dBA.

- Include noise control requirements in specifications provided to construction contractors. Such requirements could include, but are not limited to, performing all work in a manner that minimizes noise to the extent feasible; use of equipment with effective mufflers; undertaking the most noisy activities during times of least disturbance to surrounding residents and occupants, as feasible; and selecting haul routes that avoid residential buildings to the extent that such routes are otherwise feasible.

- Prior to the issuance of each building permit, along with the submission of construction documents, submit to the Planning Department and Department of Building Inspection (DBI) a list of measures that shall be implemented and that shall respond to and track complaints pertaining to construction noise. These measures shall include (1) a procedure and phone numbers for notifying DBI and the Police Department (during regular construction hours and off-hours); (2) a sign posted on site describing noise complaint procedures and a complaint hotline number that shall be answered at all times during construction; (3) designation of an on-site construction complaint and enforcement manager for the project; and (4) notification of neighboring residents and non-residential building managers within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities (defined as activities generating anticipated noise levels of 80 dBA or greater without noise controls, which is the standard in the Police Code) about the estimated duration of the activity.

Project Mitigation Measure 12: Noise and Vibration Control Measures during Pile Driving [Implementing Central SoMa Plan PEIR Mitigation Measure M-NO-2b]. The sponsor shall prepare a set of site-specific noise attenuation measures under the supervision of a qualified acoustical consultant. These attenuation measures shall be included in construction of the project and shall include as many of the following control strategies, and any other effective strategies, as feasible:

- The project sponsor of a development project in the Plan Area shall require the construction contractor to erect temporary plywood or similar solid noise barriers along the boundaries of the project site to shield potential sensitive receptors and reduce noise levels;

- The project sponsor of a development project in the Plan Area shall require the construction contractor to implement "quiet" pile-driving technology (such as pre-drilling of piles, sonic pile drivers, and the use of more than one pile driver to shorten the total pile driving duration), where feasible, with consideration of geotechnical and structural requirements and soil conditions (including limiting vibration levels to the Federal Transit

Administration's 0.5 inch per second, PPV to minimize architectural damage to adjacent structures);

- The project sponsor of a development project in the Plan Area shall require the construction contractor to monitor the effectiveness of noise attenuation measures by taking noise measurements, at a distance of 100 feet, at least once per day during pile-driving; and

The project sponsor of a development project in the Plan Area shall require that the construction contractor limit pile driving activity to result in the least disturbance to neighboring uses.

Air Quality

Project Mitigation Measure 13: Education for Residential and Commercial Tenants Concerning Low-VOC Consumer Products [Implementing Central SoMa Plan PEIR Mitigation Measure M-AQ-3a]. Prior to receipt of any certificate of final occupancy and every five years thereafter, the project sponsor shall develop electronic correspondence to be distributed by email or posted on site annually to tenants of the project that encourages the purchase of consumer products and paints that are better for the environment and generate less VOC emissions. The correspondence shall encourage environmentally preferable purchasing and shall include contact information and links to SF Approved. SF Approved (sfapproved.org) is administrated by the San Francisco Department of Environment staff, who identifies products and services that are safer and better for the environment (e.g., those that are listed as "Required" or "Suggested").

Project Mitigation Measure 14: Reduce Operational Emissions. [Implementing Central SoMa Plan PEIR Mitigation Measure M-AQ-3b]. The sponsor shall implement the additional measures, as applicable and feasible, to reduce operational criteria air pollutant emissions. Such measures may include, but are not limited to, the following:

- For any proposed refrigerated warehouses or large (greater than 20,000 square feet) grocery retailers, provide electrical hook-ups for diesel trucks with Transportation Refrigeration Units at the loading docks.

- Use low- and super-compliant VOC architectural coatings in maintaining buildings. "Low-VOC" refers to paints that meet the more stringent regulatory limits in South Coast Air Quality Management District Rule 1113; however, many manufacturers have reformulated to levels well below these limits. These are referred to as "Super-Compliant" architectural coatings.

- Implement Project Mitigation Measure 15, Best Available Control Technology for Diesel Generators and Fire Pumps.

- Other measures that are shown to effectively reduce criteria air pollutant emissions on site or offsite (e.g., mitigation offsets) if emissions reductions are realized within the SFBAAB. Measures to reduce emissions on site are preferable to off-site emissions reductions. The project sponsor would be required to pay an offset mitigation fee to the BAAQMD to fund emissions reduction projects that would reduce emissions of ozone precursors to below the applicable thresholds. The fee could support the Carl Moyer program within the

SFBAAB, which establishes the cost-effectiveness criteria for funding emissions reduction projects at $18,030 per weighted ton of ROG, NOX, and PM emissions.

Project Mitigation Measure 15: Best Available Control Technology for Diesel Generators and Fire Pumps [Implementing Central SoMa Plan PEIR Mitigation Measure M-AQ-5a]. All diesel generators and fire pumps shall have engines that (1) meet Tier 4 Final or Tier 4 Interim emission standards, or (2) meet Tier 2 emission standards and are equipped with a California Air Resources Board Level 3 Verified Diesel Emissions Control Strategy. All diesel generators and fire pumps shall be fueled with renewable diesel, R99, if commercially available. For each new diesel backup generator or fire pump permit submitted for the project, including any associated generator pads, engine and filter specifications shall be submitted to the San Francisco Planning Department for review and approval prior to issuance of a permit for the generator or fire pump from the San Francisco Department of Building Inspection. Once operational, all diesel backup generators and Verified Diesel Emissions Control Strategy shall be maintained in good working order in perpetuity and any future replacement of the diesel backup generators, fire pumps, and Level 3 Verified Diesel Emissions Control Strategy filters shall be required to be consistent with these emissions specifications. The operator of the facility shall maintain records of the testing schedule for each diesel backup generator and fire pump for the life of that diesel backup generator and fire pump and provide this information for review to the Planning Department within three months of requesting such information.

Project Mitigation Measure 16: Construction Emissions Minimization Plan [Implementing Central SoMa Plan PEIR Mitigation Measure M-AQ-4b/M-AQ-6a]. The project sponsor shall submit a Construction Emissions Minimization Plan (Plan) to the Environmental Review Officer (ERO) for review and approval by an Environmental Planning Air Quality Specialist. The Plan shall be designed to reduce air pollutant emissions to the greatest degree practicable.

The Plan shall detail project compliance with the following requirements:

1. All off-road equipment greater than 25 horsepower and operating for more than 20 total hours over the entire duration of construction activities shall meet the following requirements:

    (a) Where access to alternative sources of power are available, portable diesel engines shall be prohibited;

    (b) All off-road equipment shall have:

        i. Engines that meet or exceed either U.S. Environmental Protection Agency or California Air Resources Board Tier 2 off-road emission standards (or Tier 3 off-road emissions standards if NOx emissions exceed applicable thresholds), *and*

        ii. Engines that are retrofitted with an ARB Level 3 Verified Diesel Emissions Control Strategy (VDECS), *and*

        iii. Engines shall be fueled with renewable diesel (at least 99 percent renewable diesel or R99).

(c) Exceptions:

i. Exceptions to 1(a) may be granted if the project sponsor has submitted information providing evidence to the satisfaction of the ERO that an alternative source of power is limited or infeasible at the project site and that the requirements of this exception provision apply. Under this circumstance, the sponsor shall submit documentation of compliance with 1(b) for on-site power generation.

ii. Exceptions to 1(b)(ii) may be granted if the project sponsor has submitted information providing evidence to the satisfaction of the ERO that a particular piece of off-road equipment with an ARB Level 3 VDECS (1) is technically not feasible, (2) would not produce desired emissions reductions due to expected operating modes, (3) installing the control device would create a safety hazard or impaired visibility for the operator, or (4) there is a compelling emergency need to use off-road equipment that are not retrofitted with an ARB Level 3 VDECS and the sponsor has submitted documentation to the ERO that the requirements of this exception provision apply. If granted an exception to 1(b)(ii), the project sponsor shall comply with the requirements of 1(c)(iii).

iii. If an exception is granted pursuant to 1(c)(ii), the project sponsor shall provide the next-cleanest piece of off-road equipment as provided by the step down schedule in Table M-AQ-4B:

Table M-AQ-4B:
Off-Road Equipment Compliance Step Down Schedule*

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 2**	ARB Level 2 VDECS
2	Tier 2	ARB Level 1 VDECS

* How to use the table. If the requirements of 1(b) cannot be met, then the project sponsor would need to meet Compliance Alternative 1. Should the project sponsor not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met. Should the project sponsor not be able to supply off-road equipment meeting Compliance Alternative 2, then Compliance Alternative 3 would need to be met.

** Tier 3 off road emissions standards are required if NOx emissions exceed applicable thresholds.

2. The project sponsor shall require the idling time for off-road and on-road equipment be limited to no more than two minutes, except as provided in exceptions to the applicable State regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in multiple languages (English, Spanish, Chinese) in designated queuing areas and at the construction site to remind operators of the two-minute idling limit.

3. The project sponsor shall require that construction operators properly maintain and tune equipment in accordance with manufacturer specifications.

4. The Plan shall include estimates of the construction timeline by phase with a description of each piece of off-road equipment required for every construction phase. Off-road equipment descriptions and information may include, but is not limited to, equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For the VDECS installed: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment not using renewable diesel, reporting shall indicate the type of alternative fuel being used.

5. The Plan shall be kept on site and available for review by any persons requesting it and a legible sign shall be posted at the perimeter of the construction site indicating to the public the basic requirements of the Plan and a way to request a copy of the Plan. The project sponsor shall provide copies of Plan as requested.

6. *Reporting.* Quarterly reports shall be submitted to the ERO indicating the construction phase and off-road equipment information used during each phase including the information required in Paragraph 4, above. In addition, for off-road equipment not using renewable diesel, reporting shall indicate the type of alternative fuel being used.

   Within six months of the completion of construction activities, the project sponsor shall submit to the ERO a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. For each phase, the report shall include detailed information required in Paragraph 4. In addition, for off-road equipment not using renewable diesel, reporting shall indicate the type of alternative fuel being used.

7. *Certification Statement and On-Site Requirements.* Prior to the commencement of construction activities, the project sponsor shall certify (1) compliance with the Plan, and (2) all applicable requirements of the Plan have been incorporated into contract specifications.

Wind

Project Mitigation Measure 17: Wind Hazard Criterion for the Plan Area [Implementing Central SoMa Plan PEIR Mitigation Measure M-WI-1]. In portions of the Central SoMa Plan area outside the C-3 Use Districts, projects proposed at a roof height greater than 85 feet shall be evaluated by a qualified wind expert as to their potential to result in a new wind hazard exceedance or aggravate an existing pedestrian-level wind hazard exceedance (defined as the one-hour wind hazard criterion of 26 miles per hour equivalent wind speed). If the qualified expert determines that wind-tunnel testing is required due to the potential for a new or worsened wind hazard exceedance, the following requirements for reduction of ground-level wind speeds in areas of substantial pedestrian use shall apply:

- New buildings and additions to existing buildings shall be shaped (e.g., include setbacks, or other building design techniques), or other wind baffling measures shall be implemented, so that the development would result in the following with respect to the one-hour wind hazard criterion of 26 miles per hour equivalent wind speed:

    - No net increase, compared to existing conditions, in the overall number of hours during which the wind hazard criterion is exceeded (the number of exceedance locations may change, allowing for both new exceedances and elimination of existing exceedances, as long as there is no net increase in the number of exceedance locations), based on wind-tunnel testing of a representative number of locations proximate to the project site; OR

    - Any increase in the overall number of hours during which the wind hazard criterion is exceeded shall be evaluated in the context of the overall wind effects of anticipated development that is in accordance with the Plan. Such an evaluation shall be undertaken if the project contribution to the wind hazard exceedance at one or more locations relatively distant from the individual project site is minimal and if anticipated future Plan area development would substantively affect the wind conditions at those locations. The project and foreseeable development shall ensure that there is no increase in the overall number of hours during which the wind hazard criterion is exceeded.

    - New buildings and additions to existing buildings that cannot meet the one-hour wind hazard criterion of 26 miles per hour equivalent wind speed performance standard of this measure based on the above analyses, shall minimize to the degree feasible the overall number of hours during which the wind hazard criterion is exceeded.

Biological Resources

Project Mitigation Measure 18: Pre-Construction Bat Surveys [Implementing Central SoMa Plan PEIR Mitigation Measure M-BI-1]. Conditions of approval for building permits issued for construction within the Plan Area shall include a requirement for pre-construction special-status bat surveys when trees with a diameter at breast height equal to or greater than 6 inches are to be removed or vacant buildings that have been vacant for six months or longer are to be demolished. If active day or night roosts are found, a qualified biologist (i.e., a biologist holding a CDFW collection permit and a Memorandum of Understanding with the CDFW allowing the biologist to handle and collect bats) shall take actions to make such roosts unsuitable habitat prior to tree removal or building demolition. A no disturbance buffer shall be created around active bat roosts being used for maternity or hibernation purposes at a distance to be determined in consultation with CDFW. Bat roosts initiated during construction are presumed to be unaffected, and no buffer would necessary.

IMPROVEMENT MEASURES

Transportation and Circulation

Project Improvement Measure 1: Visual Controls at Parking Garage Driveway. To reduce and/or eliminate potential pedestrian-vehicle conflicts, the project sponsor shall install visual devices at the underground parking garage driveway, which would notify pedestrians of exiting vehicles, and the project sponsor shall not install street trees at or near the driveways to maintain adequate sight distances and visual clearance for pedestrians walking along the east side sidewalk of Sixth Street and west side of Fifth Street, and vehicles entering/exiting the project driveways.

Project Improvement Measure 2: Internal Street Circulation and Safety Treatments. As an improvement measure to reduce any potential conflicts between pedestrians and moving vehicles (including freight/delivery vehicles and general vehicles) maneuvering in and out of internal streets, underground parking garage, and loading zones, the project sponsor shall provide additional pedestrian treatments to assure safe passage of pedestrians throughout the project site and reduce and/or eliminate any vehicle-pedestrian conflicts. The project sponsor shall provide:

- Signage and notifications along internal streets to notify drivers of pedestrian activity;
- Adequate scaled lighting to provide ample illumination of internal streets for drivers and pedestrians;
- Special pavement markings to delineate the pedestrian walkway within the internal streets and to better guide pedestrians attempting to access various buildings from internal streets and to maintain a safe distance from stopped or moving vehicles within the project site;
- Additional signage along passenger loading areas to inform non-authorized personnel that traversing these areas is strictly prohibited, and proper signage shall guide non-authorized personnel to the nearest appropriate path of travel;
- Install appropriate striping within internal streets to delineate traffic lanes;
- Install STOP sign at intersection of Morris Street and shared service drive to require southbound vehicles along Morris Street to stop and yield to any northbound vehicles;
- Install signage stating "No Public Access" at the Bryant and Morris streets intersection to deter cut-through traffic (between Bryant Street and Sixth Street) from drivers not associated with on-site uses;
- Install signage at Brannan Street Plaza and private driveway that states "Employee Access Only" to deter pedestrians from walking near the underground parking garage driveway and along Morris Street; and

All pedestrian treatments shall be constructed in accordance with the California Manual on Uniform Traffic Control Devices (MUTCD). Such pedestrian treatments may require approvals by the San Francisco Planning Department, DPW, SDAT, and SFMTA, as appropriate.

Biological Resources

Project Improvement Measure 3: Night Lighting Minimization [Implementing Central SoMa Plan PEIR Improvement Measure I-BI-2]. In compliance with the voluntary San Francisco Lights

Out Program, the project sponsor shall implement bird-safe building operations to prevent and minimize bird strike impacts, including but not limited to the following measures:

- Reduce building lighting from exterior sources by:
    - Minimizing the amount and visual impact of perimeter lighting and façade up-lighting and avoid up-lighting of rooftop antennae and other tall equipment, as well as of any decorative features;
    - Installing motion-sensor lighting;
    - Utilizing minimum wattage fixtures to achieve required lighting levels.
- Reduce building lighting from interior sources by:
    - Dimming lights in lobbies, perimeter circulation areas, and atria;
    - Turning off all unnecessary lighting by 11:00 p.m. through sunrise, especially during peak migration periods (mid-March to early June and late August through late October);
    - Utilizing automatic controls (motion sensors, photo-sensors, etc.) to shut off lights in the evening when no one is present;
    - Encouraging the use of localized task lighting to reduce the need for more extensive overhead lighting;
    - Scheduling nightly maintenance to conclude by 11:00 p.m.;
    - Educating building users about the dangers of night lighting to birds.

IMPROVEMENT MEASURES

INTERIM WHOLESALE FLOWER MARKET PROJECT

Project Mitigation Measure 7: Archeological Testing, Monitoring, Data Recovery, Accidental Discovery, and Reporting [Implementing BVHP PEIR Mitigation Measures 12, 13, and 14]. A review of boring logs from a site-specific geotechnical investigation indicates that the Interim Wholesale Flower Market site at 2000 Marin Street may contain archeological resources within the project site.[2] Accordingly, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of an archaeological consultant from the rotational Department Qualified Archaeological Consultants List (QACL) maintained by the Planning Department archaeologist. The project sponsor shall contact the Department archeologist to obtain the names and contact information for the next three archeological consultants on the QACL. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall provide accidental discovery training to the construction crew regarding protocols for protection of resources discovered during construction; and shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance

[2] Rockridge Geotechnical, Preliminary Geotechnical Investigation: Proposed Commercial Building—2000 Marin Street, San Francisco, California, June 21, 2019.

with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines section 15064.5(a) and (c).

Consultation with Descendant Communities: On discovery of an archeological site[3] associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group an appropriate representative[4] of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archaeological Resources Report shall be provided to the representative of the descendant group.

Consultation with Descendant Communities: On discovery of an archeological site[5] associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group an appropriate representative of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and, if applicable, any interpretative treatment of the associated archeological site. A copy of the Final Archaeological Resources Report shall be provided to the representative of the descendant group.

Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in

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[3] By the term "archeological site" is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

[4] An "appropriate representative" of the descendant group is here defined to mean, in the case of Native Americans, any individual listed in the current Native American Contact List for the City and County of San Francisco maintained by the California Native American Heritage Commission and in the case of the Overseas Chinese, the Chinese Historical Society of America. An appropriate representative of other descendant groups should be determined in consultation with the Department archeologist.

[5] By the term "archeological site" is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the Planning Department archeologist. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

A. The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or

B. A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context;

- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource;

- The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits;

- The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis;

- If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving or deep foundation activities (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving or deep foundation activities may affect an archeological resource, the pile driving or deep foundation activities shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and

significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO, as detailed below.

Archeological Data Recovery Program. The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical. The scope of the ADRP shall include the following elements:

Field Methods and Procedures. Descriptions of proposed field strategies, procedures, and operations.

- *Cataloguing and Laboratory Analysis.* Description of selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains, Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal Laws, including immediate notification of the Office of the Chief Medical Examiner of the City and County of San Francisco and in the event of the Medical Examiner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Public Resources Code section 5097.98). The ERO shall also be immediately notified upon discovery of human remains. The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond six days after the discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation,

analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing State regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement if such as agreement has been made or, otherwise, as determined by the archeological consultant and the ERO. If no agreement is reached State regulations shall be followed including the reburial of the human remains and associated burial objects with appropriate dignity on the property in a location not subject to further subsurface disturbance (Public Resources Code section 5097.98).

Accidental Discovery: The project sponsor shall distribute the Planning Department archeological resource "ALERT" sheet to the project prime contractor; to any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); or utilities firm involved in soils disturbing activities within the project site. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel including, machine operators, field crew, pile drivers, supervisory personnel, etc.

In addition, the archaeological consultant shall provide a preconstruction training shall be provided to all construction personnel performing or managing soils disturbing activities prior to the start of soils disturbing activities on the project. The purpose of the training is to enable personnel to identify archaeological resources that may be encountered and to instruct them on what to do if a potential discovery occurs. Images of expected archeological resource types and archeological testing and data recovery methods should be included in the training.

The project sponsor shall provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractor(s), and utilities firm) to the ERO confirming that all field personnel have received copies of the Alert Sheet and have taken the preconstruction training.

Should any indication of an archeological resource be encountered during any soils disturbing activity of the project when the qualified archaeologist is not present, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils disturbing activities in the vicinity of the discovery and protect the find in place until the ERO has determined what additional measures should be undertaken.

Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound, one unbound and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high

interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

Project Mitigation Measure 8: Project-Specific Tribal Cultural Resource Assessment. The project shall be reviewed for the potential to affect a tribal cultural resource in tandem with the preliminary archeology review of the project by the San Francisco Planning Department archeologist. If preservation staff determines that the proposed project may have a potential significant adverse effect on a tribal cultural resource, then the following shall be required as determined warranted by the ERO.

If staff determines that preservation-in-place of the tribal cultural resource is both feasible and effective, based on information provided by the applicant regarding feasibility and other available information, then the project archeological consultant shall prepare an archeological resource preservation plan. Implementation of the approved plan by the archeological consultant shall be required when feasible. If staff determines that preservation–in-place of the Tribal Cultural Resource is not a sufficient or feasible option, then the project sponsor shall implement an interpretive program of the resource in coordination with affiliated Native American tribal representatives. An interpretive plan produced in coordination with affiliated Native American tribal representatives, at a minimum, and approved by the ERO shall be required to guide the interpretive program. The plan shall identify proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.

EXHIBIT M

Form of Assignment and Assumption Agreement

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO
(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

[Angela Calvillo]
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO DEVELOPMENT AGREEMENT FOR [_____]

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "**Assignment**") is entered into this _____ day of _____, 20__, by and between_____, a _____ ("**Assignor**") and _____, a _____ ("**Assignee**").

RECITALS

A. [KR Flower Mart], a _____ and the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**"), entered into that certain Development Agreement (the "**Development Agreement**") dated as of _____, 2019 for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on _____ as Document No. _____.

[*add recital to document any previous transfer of the Transferred Property, with recording information*]

B. The Development Agreement provides that Developer (Assignor) has the right to: (i) Transfer all or a portion of the Project Site, (ii) assign all of its rights, title, interest and obligations under the Development Agreement to a Transferee with respect to the portions of the Project Site transferred to the Transferee, and (iii) upon the recordation of an approved Assignment and Assumption Agreement, to be released from any prospective liability or obligation under the Development Agreement related to the Transferred Property as set forth in Section 13.3 of the Development Agreement.

C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property** ") to Assignee. The Transferred Property is subject to the Development Agreement.

D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Defined Terms. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

2. Assignment of Development Agreement. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including any Community Benefits that are tied to Buildings on the Transferred Property. Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Project Site owned by Assignor.

3. Assumption of Development Agreement. Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Transferred Property, including its associated Community Benefits, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Transferred Property, and to be subject to all the terms and conditions thereof with respect to the Transferred Property. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Developer" under the Development Agreement with respect to the Transferred Property.

4. Reaffirmation of Indemnifications. Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including without limitation Section 5.7 of the Development Agreement.

5. [Flower Mart Relocation Obligation. *Include language describing Assignee's requirement to complete the Flower Market relocation and rent caps, etc., as applicable, and acceptance of Flower Market Obligations cross-default provisions*]

6. Assignee's Covenants. Assignee hereby covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement; (b) Assignee shall not sue the City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, including any failure to complete all or any part of the Project by any party; and (c) Assignee shall indemnify the City and its officers, agents and employees from, and if requested, shall defend

them against any and all Losses resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement.

6. Binding on Successors. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

7. Notices. The notice address for Assignee under Section 15.11 of the Development Agreement shall be:

_____
_____
_____
Attn: _____

With copy to:

_____
_____
_____
Attn: _____

8. Counterparts. This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

9. Governing Law. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

EXHIBIT N

Notice of Completion and Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

_____
[KR Flower Mart LLC]
[address]_____
_____
_____
Attn: _____

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

THIS NOTICE OF COMPLETION OF BUILDING AND COMMUNITY BENEFITS (this "Notice") dated for reference purposes only as of this _____ day of _____, 20__, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "City"), acting by and through its Planning Department, and [KR Flower Mart, a _____ limited liability corporation] ("Developer") [*substitute party, if needed*].

1. The City and Developer entered into that certain Development Agreement dated as of _____, and recorded in the Official Records of the City And County of San Francisco on _____, as Document Number _____ (Book No. ___, Reel No. _____) (the "Development Agreement"). Capitalized terms used in this Notice that are not defined shall have meaning given to such terms in the Development Agreement.

2. Under Section 7.1 of the Development Agreement, when one or more Buildings have been completed and all of the Associated Community Benefits tied to those specific Buildings have also been completed, the City agreed, upon Developer's request, to execute and record a notice of completion as it relates to the applicable Building.

3. The City confirms that the Building known as _____, located on the property described in the attached Exhibit A (the "Affected Property"), together with all of the Associated Community Benefits tied to that Building, have been completed in accordance with the Development Agreement. All parties with an interest in the Affected Property have the right to rely on this Notice.

CITY:

CITY AND COUNTY OF SAN FRANCISCO, municipal corporation

By:_____
Director of Planning

Approved as to form:

[DENNIS J. HERRERA], City Attorney

By:_____
Deputy City Attorney

Exhibit O

Workforce Agreement

Developer shall make contributions and require Project Sponsors, Contractors, Consultants, Subcontractors and Subconsultants, as applicable, to undertake activities to support workforce development in both the construction and end use phases of the Project, as set forth in this Exhibit O.

A. **Job Training Funds.**

The Project shall contribute to the City $200,000 (Two Hundred Thousand Dollars) to support certain workforce jobs training programs ("**Job Training Funds**"). Such funds shall be paid to City at the time when the other development impact fees for the Project are due, and be allocated only to direct services and used as provided herein.

1. Accounting. Developer shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is used in accordance with the provisions of this Exhibit O. The Job Training Funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall maintain records as part of the City's accounting system to account for all the expenditures for a period of four (4) years following the date of the expenditure, and make such records available upon Developer's request.

2. Board Authorization. By approving the Agreement, the Board of Supervisors authorizes the City to accept and expend the Job Training Funds paid by the Developer as set forth in this Exhibit O. The Board of Supervisors also agrees that any interest earned on any the Job Training Funds shall remain in designated accounts for use by the City for training consistent with this Exhibit O and shall not be transferred to the City's general fund.

B. **First Source Hiring Program.**

1. Each Project Sponsor shall, with respect to each Workforce Building[2], (i) include in each Contract for construction work a provision requiring each Contractor to enter into a FSHA Construction Agreement in the form attached hereto as Attachment A before beginning any construction work, and (ii) provide a signed copy thereof to the First Source Hiring

Administration ("**FSHA**") and CityBuild within 10 business days of execution.

2. Each Project Sponsor shall, with respect to each Workforce Building, comply with the requirements of San Francisco Administrative Code Chapter 83 ("**Chapter 83**") and upon entering into leases or other occupancy contracts for commercial space at the Premises that are subject to Chapter 83 with a tenant ("**Commercial Tenant**"), will include in each such contract a requirement that the Commercial Tenant enter into a FSHA Operations Agreement in the form attached hereto as Attachment B, and (ii) provide a signed copy thereof to the FSHA within 10 business days of execution.

3. CityBuild shall represent the FSHA and will provide referrals of Qualified Economically Disadvantaged Individuals for Entry Level Positions on the construction work for each Workforce Building as required under Chapter 83. The FSHA will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent Entry Level Positions located within the Premises where required under Chapter 83.

4. The owners or residents of the individual residential units and any residential Homeowner's Association within the Project shall have no obligations under this Section B and no obligation to enter into a FHSA Construction Agreement or FHSA Operations Agreement.

5. FSHA shall notify any Contractor, Subcontractor and Commercial Tenant, as applicable, in writing, with a copy to Project Sponsor, of any alleged breach on the part of that entity of its obligations under Chapter 83 or its FSHA Construction Agreement or the FSHA Operations Agreement, as applicable, before seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code. FSHA sole remedies against a Contractor, Subcontractor or Commercial Tenant shall be as set forth in Chapter 83, including the enforcement process. Upon FSHA's request, a Project Sponsor shall reasonably cooperate with FSHA in any such enforcement action against any Contractor, Subcontractor or Commercial Tenant, provided in no event shall a Project Sponsor be liable for any breach by a Contractor, Subcontractor or Commercial Tenant.

6. If a Project Sponsor fulfills its obligations as set forth in this Section B, it shall not be held responsible for the failure of a Contractor, Subcontractor, Commercial Tenant or any other person or party to comply with the requirements of Chapter 83 or this Section B. If a Project Sponsor fails to fulfill its obligations under this Section B, the applicable provisions of Chapter 83 shall apply, though the City and the Project Sponsor shall have the right to invoke the process set forth in Section 9.2 of the Agreement.

C. **Local Business Enterprise (LBE) Utilization Program.**

Each Project Sponsor of a Workforce Building, as defined in Attachment C, and its respective Contractors and Consultants, shall comply with the Local Business Enterprise Utilization Program with an overall good faith efforts goal of 10% as more particularly set forth in Attachment C hereto.

[2] Any capitalized term used in this Section B that is not defined will have the definition given to such term in Attachment A, including the following terms: Contract, Contractor, Entry Level Positions, Project Sponsor, Qualified Economically Disadvantaged Individuals for Entry Level Positions, and Workforce Building.

Attachment A:

First Source Construction Hiring Agreement

This First Source Construction Hiring Agreement ("FSHA Construction Agreement") is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct [specify number of new dwelling units, and/or square feet of commercial space and number of accessory, off-street parking spaces] ("Workforce Building") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this FSHA Construction Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this First Source Construction Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Construction Agreement, initially capitalized terms shall be defined as follows:

a. "Core" or "Existing" workforce: Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.

b. Economically Disadvantaged Individual: An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.

c. Hiring opportunity: When a Contractor adds workers to its existing workforce for the purpose of performing the Work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on a Workforce Building.

d. Job Notification: Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.

e. New hire: A "new hire" is any worker who is not a member of Contractor's core or existing workforce.

f. Referral: A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.

g. Workforce Building: Blocks Building, Market Hall Building and Gateway Building as described in Exhibit B.1 (and alternatively B.2) to the 5th and Brannan Development Agreement, including initial tenant improvements therein, and any other Buildings or construction activities in the Project Site that require a Permit as defined in Chapter 83.

h. Workforce participation goal: The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for a Workforce Building.

i. Entry Level Position: A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent construction jobs related to the development of a commercial activity.

j. First Opportunity: Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.

k. Job Classification: Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

l. Job Notification: Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.

m. Publicize: Advertise or post available employment information, including participation in job fairs or other forums.

n. Qualified: An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this FSHA Construction Agreement.

o. System: The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring

requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

p. System Referrals: Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

q. Subcontractor: A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

r. Project Sponsor. Project Sponsor shall mean [*insert name of applicable Developer or Workforce Building owner]* , including any successor during the term of this FSHA Operations Agreement.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-Level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract for each Workforce Building:

i. On Attachment A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on each Workforce Building for each trade.

ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.

iii. Contractor will collaborate with CityBuild staff in completing the CityBuild Workforce Hiring Plan Form 2, to identify, by trade, the number of Core workers at Workforce Building project start and the number of workers at Workforce Building project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.

iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.

v. A negotiated and signed CityBuild Workforce Hiring Plan Form 2 will constitute the First Source Hiring Plan for each Workforce Building as required under Chapter 83.

b. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry

Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the Workforce Building.

c. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

   i. If Contractor meets the criteria in Section 5(a) below that establishes "good faith efforts" of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

   ii. After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes "good faith efforts" of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

d. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the First Opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable Collective Bargaining Agreements as defined in Section 8 below. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any Collective Bargaining Agreement(s) requiring compliance with a pre-established applicant referral process, Contractor's only obligations with regards to any available Entry Level Positions subject to such Collective Bargaining Agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor's obligations under this FSHA Construction Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the Collective Bargaining Agreement(s).

b. Contractor shall use "name call" privileges, in accordance with the terms of the applicable Collective Bargaining Agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this FSHA Construction Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction of a Workforce Building Attachment A-1: CityBuild Workforce Projection Form 1; and

b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this FSHA Construction Agreement. Such review shall be conducted by FSHA in accordance with Section 11 (c) below.

c. Meet with the Workforce Building project's Project Sponsor, general contractor, or CityBuild representative to review and discuss the plan to meet local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.

d. Contact a CityBuild representative to review hiring projections and goals for this Workforce Building project. Contractor must take active steps to advise all of its subcontractors of the local hiring obligations on the Workforce Building project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the Workforce Building project.

e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying expected hiring needs during the Workforce Building project's duration.

f. Notify the respective union(s) regarding local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate the union's Collective Bargaining Agreement(s).

g. Reserve "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable Collective Bargaining Agreement(s).

h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on this project in a timely matter in order to facilitate CityBuild's notification to these unions of the Workforce Building project's workforce requirements.

i. Submit a "Job Request" form to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). Contractor should simultaneously contact its union about the position as well, and let them know that Contractor has contacted CityBuild as part of its local hiring obligations.

j. The Contractor has an ongoing, affirmative obligation and must advise each of its subs of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the Workforce Building project, including openings that arise from layoffs of original crew. Contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the Contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.

k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Contractor will request a meeting with the Workforce Building project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.

l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Workforce Building project, source of hire, and any other pertinent information as pertain to compliance with this FSHA Construction Agreement.

m. Maintain accurate records of efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor through a San Francisco CBO whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Contractor on a Workforce Building project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and minimum hiring goals using Form 2: the CityBuild Workforce Hiring Plan, provided, however, that Contractor shall retain the primary responsibility for meeting the requirements imposed under this FSHA Construction Agreement. Contractor shall

ensure that this FSHA Construction Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this FSHA Construction Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this FSHA Construction Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

8. CONTRACTOR'S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this FSHA Construction Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this FSHA Construction Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Construction Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this FSHA Construction Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this FSHA Construction Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this FSHA Construction Agreement, CityBuild shall:

a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.

b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor's Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;

c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;

d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;

f. Provide Contractor with reporting forms for monitoring the requirements of this FSHA Construction Agreement; and

g. Monitor the performance of the FSHA Construction Agreement by examination of records of Contractor as submitted in accordance with the requirements of this FSHA Construction Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:

(1) Applicants
(2) Job offers
(3) Hires
(4) Rejections of applicants

b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.

c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this FSHA Construction Agreement.

12. DURATION OF THIS AGREEMENT

This FSHA Construction Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this FSHA Construction Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

All notices to be given under this FSHA Construction Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail,

a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA: First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, Compliance Manager,
ken.nim@sfgov.org

If to Project Sponsor: Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

If to Contractor:

Attn:

a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This FSHA Construction Agreement and the 5th and Brannan Street Development Agreement contain the entire agreement between the parties to this FSHA Construction Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest. This FSHA Construction Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Contractor, their obligations shall be joint and several.

15. SEVERABILITY

If any term or provision of this FSHA Construction Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this FSHA Construction Agreement shall not be affected.

16. COUNTERPARTS

This FSHA Construction Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. HEADINGS

Section titles and captions contained in this FSHA Construction Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this FSHA Construction Agreement or the intent of any of its provisions

18. GOVERNING LAW

This FSHA Construction Agreement shall be governed and construed by the laws of the State of California, and interpreted consistent with the requirements of Chapter 83.

IN WITNESS WHEREOF, the following have executed this FSHA Construction Agreement as of the date set forth above.

CONTRACTOR:

Date: _____ Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FIRST SOURCE HIRING PROGRAM
ATTACHMENT A-1 - CITYBUILD
CONSTRUCTION CONTRACTS

FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.
All subcontractors with contracts in excess of $100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.
The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.
It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.
All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.

Construction Project Name: _____

Construction Project Address: _____

Projected Start Date: _____

Contract Duration: _____ *(calendar days)*

Company Name: _____

Company Address: _____

Main Contact Name: _____

Main Phone Number: _____

Main Contact Email : _____

Name of Person with Hiring Authority: _____

Hiring Authority Phone Number: _____

Hiring Authority Email: _____

Name of Authorized Representative _____ Signature of Authorized Representative* _____ Date _____

By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Table 1: Briefly summarize your contracted or subcontracted scope of work

Table 2: Complete on the following page

List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.

Total Number of Workers on the Project: The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.

Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			

Table 3: List your core or existing employees projected to work on the project

Please provide information on your projected core or existing employees that will perform work on the jobsite.
"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
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		J ☐ A ☐		
		J ☐ A ☐		

FOR CITY USE ONLY: CityBuild Staff:____________________ Approved: Yes ☐ No ☐ Date:__________
Reason:____

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FORM 4: FIRST SOURCE SUMMARY REPORT

Reporting Period (Month/Year): _____

Project Name: _____ Project Address: _____ Company Name: _____ Date: _____

Contractor Representative: _____ Signature: _____ Email: _____ Contact Number: _____

COUNT	LAST	FIRST	ZIP CODE	JOURNEY/ APPRENTICE	CRAFT	REFERRAL SOURCE	NEW HIRE	DATE OF HIRE (New Hires Only)
1 (e.g.)	Doe	John	94080	JOURNEY	LABORER	Union	YES	1/1/2012
2 (e.g.)	Doe	Jane	94124	APPRENTICE	CARPENTER	CityBuild	YES	2/1/2012
3 (e.g.)	Piper	Peter	94502	JOURNEY	PILE DRIVER	Core	NO	9/1/2011

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SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
CITYBUILD PROGRAM

FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: workforce.development@sfgov.org
2. Contact Workforce Development at 415-701-4848 or by email: local.hire.ordinance@sfgov.org

   OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

ATTENTION: *Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.*

Section A. Job Notice Information

Trade _____ # of Journeymen _____ # of Apprentices _____

Start Date _____ Start Time _____ Job Duration _____

Brief description of your scope of work: _____

Section B. Union Information *(Union contractors complete Section B. Otherwise, leave Section B blank)*

Local #_____ Union Contact Name_____ Union Phone # _____

Section C. Contractor Information

Project Name: _____

Jobsite Location: _____

Contractor: _____ Prime ☐ Sub ☐

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Contact Signature _____ Date _____

OEWD USE ONLY *Able to Fill* Yes ☐ No ☐

Attachment B: First Source Hiring Agreement
For Business, Commercial, Operation and Lease Occupancy of the Building

This First Source Hiring Agreement (this "FSHA Operations Agreement"), is made as of , by and between (the "Lessee"), and the First Source Hiring Administration, (the "FSHA"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy the building at [Address] "Premises" which required a First Source Hiring Agreement between the project sponsor and FSHA due to the issuance of a building permit for 25,000 square feet or more of floor space or construction of ten or more residential units; and,

WHEREAS, the Project Sponsor was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract"); and

WHEREAS, as a material part of the consideration given by Lessee under the Contract, Lessee has agreed to execute this FSHA Operations Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this FSHA Operations Agreement, initially capitalized terms shall be defined as follows:

a. Entry Level Position: Any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.

b. Workforce System: The First Source Hiring Administrator established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development (OEWD).

c. Referral: A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

d. Lessee: Tenant, business operator and any other occupant of a Workforce Building requiring a First Source Hiring Agreement as defined in SF Administrative Code Chapter 83. Lessee shall include every person tenant, subtenant, or any other entity occupying a Workforce Building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

e. Project Sponsor shall mean [*insert name of applicable Developer or Workforce Building owner]* , including any successor during the term of this FSHA Operations Agreement.

e. Workforce Building: Blocks Building, Market Hall Building, and Gateway Building as described in Exhibit B.1 (or alternatively B.2) to the 5th and Brannan Street Development Agreement, including initial tenant improvements therein, and any other Buildings or construction activities within the Project Site that require a Permit as defined in Chapter 83.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. This FSHA Operations Agreement shall be in full force and effect as to each Workforce Building until the earlier of (a) ten (10) years following the date Lessee opens for business at the Premises, or (b) termination of Lessee's lease or other occupancy agreement, at which time this FSHA Operations Agreement shall terminate and be of no further force and effect on the parties hereto.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this FSHA Operations Agreement. Determination of good faith efforts shall be based on all of the following:

a. Lessee will execute this FSHA Operations Agreement and Attachment B-1 upon entering into leases for the commercial space of the Workforce Building. Lessee

will also accurately complete and submit Attachment B-1 annually to reflect employment conditions.

b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this FSHA Operations Agreement.

c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry- Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team.

d. Lessee accurately completes and submits Attachment B-1, the "First Source Employer's Projection of Entry-Level Positions" form to OEWD's Business Services Team upon execution of this FSHA Operations Agreement.

e. Lessee fills at least 50% of open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.

f. Nothing in this FSHA Operations Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this FSHA Operations Agreement and an existing agreement, the terms of the existing agreement shall supersede this FSHA Operations Agreement.

Lessee's failure to meet the criteria set forth in Section 3 (a.b.c.d.e.) does not impute "bad faith" and shall trigger a review of the referral process and compliance with this FSHA Operations Agreement. Failure and noncompliance with this FSHA Operations Agreement will result in penalties as defined in SF Administrative Code Chapter 83, Lessee agrees to review SF Administrative Code Chapter 83, and execution of the FSHA Operations Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this FSHA Operations Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development 1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

5. ENTIRE AGREEMENT

This FSHA Operations Agreement and the 5th and Brannan Street Development Agreement contain the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this FSHA Operations Agreement shall be held invalid or unenforceable, the remainder of this FSHA Operations Agreement shall not be affected. If this FSHA Operations Agreement is executed in one or more counterparts,

each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This FSHA Operations Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns. If there is more than one party comprising Lessee, their obligations shall be joint and several.

Section titles and captions contained in this FSHA Operations Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This FSHA Operations Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this FSHA Operations Agreement as of the date set forth above.

Date: _____ Signature:

_____ Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

Business Name: _____ **Phone:** _____

Main Contact: _____ **Email:** _____

_____ _____

Signature of authorized representative* **Date**

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Attachment B and Attachment B-1. Lessee will also complete and submit an Attachment B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) If an **Entry Level Position** becomes available.

Section 1: Select your Industry

☐ Auto Repair	☐ Entertainment	☐ Personal Services
☐ Business Services	☐ Elder Care	☐ Professionals
☐ Consulting	☐ Financial Services	☐ Real Estate
☐ Construction	☐ Healthcare	☐ Retail
☐ Government Contract	☐ Insurance	☐ Security
☐ Education	☐ Manufacturing	☐ Wholesale
☐ Food and Drink	☐ I don't see my industry *(Please Describe)*_____	

Section 2: Describe Primary Business Activity

_____

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
mailto:Business.Services@sfgov.org
Website: www.workforcedevelopmentsf.org

Attachment C:

Local Business Enterprise Utilization Plan
(Exhibit O – Workforce Agreement)

1. Purpose and Scope. This Attachment C ("LBE Utilization Plan") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.

2. Roles of Parties. In connection with the design and construction phases of each Workforce Building (as defined below), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Each Project Sponsor of a Workforce Building shall participate in a local business enterprise program, and the City's Contract Monitoring Division ("CMD") will serve the roles as set forth below.

3. Definitions. For purposes of this Attachment, the definitions shall be as follows:

a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.

b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Project Sponsor, Construction Contractor or professional services firm retained to work on a Workforce Building, as the case may be (each, a "Contracting Party") as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Project Sponsor or a Contractor or professional services firm. When the Project Sponsor or a Contractor or professional services firm requires and seeks products from an LBE supplier or distributor, no more than sixty percent of the cost of the product shall be credited towards LBE participation goals. If the listed supplier or distributor does not regularly stock or is a specially manufactured item(s), the required product, no more than five percent of the cost of the product shall be credited towards LBE participation goals.

c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of a Workforce Building.

d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of a Workforce Building.

e. "Contractor" shall mean a person or entity that enters into a direct Contract with a Project Sponsor to build or construct all or a portion of a Workforce Building.

f. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 6 below.

g. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.

h. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.

i. "Project Sponsor" shall mean the project sponsor of a Workforce Building.

j. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for a Workforce Building.

k. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for a Workforce Building.

l. "Workforce Building" shall mean the Buildings as described in Exhibit B.1 (or alternatively B.2) to the 5th and Brannan Street Development Agreement, including initial tenant improvements therein.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Program and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of 10% of the total cost of all Contracts for a Workforce Building awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A).

5. Project Sponsor Obligations. Each Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 16. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns and shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. If a Project Sponsor fulfills its obligations as set forth in this Section 5 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

6. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify,

hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 6 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 6 as follows:

a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.

b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors.

c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant will advertise for at least 30 days prior to the opening of bids or proposals, for professional services and contracting opportunities in media focused on small businesses including the Bid and Contract Opportunities website through the City's Office of Contract Administration (http://mission.sfgov.org/OCABidPublication) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As practicable, convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals to all for LBEs to ask questions about the selection process and technical specifications/requirements. A Project Sponsor may request CMD's permission to award a contract without advertising if the work consists of specialty services or otherwise does not provide opportunities for LBE participation.

d. CMD Invitation. If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.

e. Public Solicitation. The Project Sponsor or its Prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.

f. Outreach and Other Assistance. The Project Sponsor or its Prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.

g. Contacts. Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.

h. Good Faith/Nondiscrimination. Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).

i. Incorporation into contract provisions. Project Sponsor shall include in prime Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including overall LBE participation goal and any LBE percentage that may be required under such Contract.

j. Monitoring. Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.

k. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third party avenues of assistance.

l. Maintain Records and Cooperation. Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer with CMD as reasonably required in addition to the meet and confer sessions described in Section 9 below to identify a strategy to meet the LBE goal;

m. Quarterly Reports. During construction, the LBE Liaison(s) shall prepare a quarterly report of LBE participation goal attainment and submit to CMD as required by Section 9 herein; and

n. Meet and Confer. Attend the meet and confer process described in Section 9.

7. Good Faith Outreach. Good faith efforts shall be deemed satisfied solely by compliance with Section 6. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 6.b, and following CMD's notice under Section 8.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.

8. CMD Obligations. The following are obligations of CMD to implement this LBE Utilization Plan:

a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 6.b, CMD will work with the Project Sponsor and its prime Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.

b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.

c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.

d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.

9. Meet and Confer Process. Commencing with the first Contract that is executed for a Workforce Building, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant each Contractor and Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

10. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 6 and 9 above.

11. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

12. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding good faith efforts as set forth in Section 6. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

a. Name/Type of Contract(s) let (e.g. Civil Engineering contract, Environmental Consulting, etc.)
b. Name of prime Contractors (including identifying which are LBEs and non-LBEs)
c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
d. Scope of work performed by LBEs (e.g. under an Architect, an LBE could be procured to provide renderings)
e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
f. Total LBE participation is defined as a percentage of total Contract dollars.

13. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected prime Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The prime Contractor or Consultant and, if applicable, the Subcontractor or Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

14. Remedies. Notwithstanding anything to the contrary in the Development Agreement, the following process and remedies shall apply with respect to any alleged violation of this Attachment C:

Mediation and conciliation shall be the administrative procedure of first resort for any and all compliance disputes arising under this Attachment C. The Director of CMD shall have power to oversee and to conduct the mediation and conciliation.

Non-binding arbitration shall be the administrative procedure of second resort utilized by CMD for resolving the issue of whether a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant discriminated in the award of one or more LBE Contracts to the extent that such issue is not resolved through the mediation and conciliation procedure described above. Obtaining a final judgment through arbitration on LBE contract related disputes shall be a condition precedent to the ability of the City or the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant to file a request for judicial relief.

If a Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant is found to be in willful breach of the obligations set forth in this Attachment C, assess against the noncompliant Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant liquidated damages not to exceed $10,000 or 5% of the Contract, whichever is less, for each such willful breach. In determining the amount of any liquidated damages to be assessed within the limits described above, the arbitrator or court of competent jurisdiction shall consider the financial capacity of the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 10.4.3-10.4.5 of the Development Agreement.

15. Duration of this Agreement. This Attachment C shall terminate (i) as to each Workforce Building where work has commenced under the Development Agreement, upon completion of initial construction, including initial tenant improvements, of the Workforce Building, and (ii) for any Workforce Building that has not commenced before the termination of the Development Agreement, upon the termination of the Development Agreement. Upon such termination, this Attachment C shall be of no further force and effect.

16. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD: _____
_____
_____
Attn: _____

If to Project Sponsor: _____
_____
_____
Attn: _____

If to Contractor: _____
_____
_____
Attn: _____

If to Consultant: _____
_____
_____
Attn: _____

Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

Exhibit P

Applicable Development Impact Fees and Sample Calculation for the Flower Mart On-Site Project

Rates listed: Per San Francisco Citywide Development Impact Fee Register, effective as of January 1, 2019.
Square Footage: Per Project description, as of the Effective Date of this Agreement, consisting for the Flower Mart On-Site Project 113,036 gsf of PDR (translating to 115,000 rentable sf), 2,032,165 gsf of office, and 83,459 gsf of retail. Project Site currently contains 160,453 gsf of existing PDR and 4,900 gsf of existing retail, which would be demolished. In total, there would be a net increase of 2,032,165 gsf of office and 78,559 gsf of retail. There would be a net decrease of 48,584 gsf of PDR.

Fee	Rate	Square Footage	Estimated Amount	Notes
Child Care Fee (Pl. Code Sec. 414)	$1.85	2,032,165	$3,759,505.25	Applies at $1.85/sf per new office use, and is applicable to the extent project does not provide on-site child care facility areas
Eastern Neighborhoods Infrastructure Impact Fee - Tier 3 (Pl. Code Sec. 423)	$0.00	113,036	$0.00	Change of use from 113,036 sf of existing PDR to new WFM use
	$0.00	4,900	$0.00	Change of use from 4,900 sf of existing retail to new retail
	$16.50	47,417	$782,380.50	Change of use from 47,417 sf of existing PDR to new non-residential
	$21.00	2,063,307	$43,329,447	Net new non-residential use (83,459 sf retail + 2,032,165 sf office – 47,417 sf change of use from existing PDR – 4,999 sf change of use from existing retail)
Transportation Sustainability Fee (Pl. Code Sec. 411A)	$0.00	113,036	$0.00	$8.96/sf would apply to new PDR, but no fee for change of use from 113,036 sf of existing PDR to new WFM
	$0.00	4,900	$0.00	Change of use from existing retail to new retail
	$15.08	47,417	$715,048.36	Change of use from 47,417 sf of existing PDR to new non-residential (rate is difference between non-residential rate ($24.04) and PDR rate ($8.96)).
	$21.23	99,999	$2,122,978.77	Net new non-residential use under 99,999 sf

Fee	Rate	Square Footage	Estimated Amount	Notes
	$24.04	1,963,308	$47,197,924.32	Net new non-residential use above 99,999 sf (83,459 sf retail + 2,032,165 sf office - 47,417 sf PDR - 4,900 sf existing retail - 99,999 sf at lower rate)
Jobs Housing Linkage Fee (Pl. Code Sec. 413)	$0.00	113,036	$0.00	Change of use from 113,036 sf of existing PDR to new WFM use
	$0.00	4,900	$0.00	Change of use from existing retail to new retail
	$38.11	47,417	$1,807,061.87	Change of use from existing PDR to new office (160,453 sf – 113,036 sf) (rate is the grandfathered office rate ($52.20) minus $14.09
	$52.20	1,984,748	$104,199,270	New office not eligible for change of use credit (2,032,165 sf – 47,417 sf eligible for a change of use credit)
	$26.66	78,559	$2,094,382.94	New retail not eligible for change of use credit (83,459 sf - 4,900 sf)
Central SoMa Com'ty Services Fee (Pl. Code Sec. 432)	$1.75	2,115,624	$3,702,342.00	For net addition of office and retail use
Central SoMa Infrastructure Fee (Pl. Code Sec. 433)	$0.00	2,115,624	$0.00	Fee would not apply to non-residential projects seeking an office allocation of at least 50,000 gsf.
School Impact Fee (Cal. Ed. Code Sec. 17620)	$0.61	2,032,759	$1,239,982.99	New office use. Note: fee is based on habitable square footage, which is typically lower than GFA figure used here.
	$0.61	113,036	$68,951.96	New PDR use. Note: fee is based on habitable square footage, which is typically lower than GFA figure used here.
	$0.596	83,459	$49,741.56	New retail use. Note: fee is based on habitable square footage, which is typically lower than GFA figure used here.

Fee	Rate	Square Footage	Estimated Amount	Notes
TDR	$30.00	368,930	$11,067,900.00	TDR for the difference between a 3 to 1 FAR and a 4.25 to 1 FAR. TDR is not an impact fee, but is shown here for illustrative purposes.
		Total including TDR	***$222,136,917.52***	Total does not include art fee (assumes on-site art at 1% of construction cost)
		Total without TDR	***$211,069,017.52***	Total does not include art fee (assumes on-site art at 1% of construction cost)

Exhibit Q

2000 Marin Exceptions

The required exceptions would be achieved via creation of a new special use district, entitled the 2000 Marin Street Special Use District ("SUD"), under new Planning Code Section 249.86, in Article 2. The 2000 Marin Street SUD applies to property located on Assessor's Parcel Block 4346, Lot 003, as will be shown on Special Use District Map SU08 of the Zoning Map of the City and County of San Francisco. Unless readopted, the new Section 249.86 will sunset six years after its effective date.

Development proposals within the 2000 Marin Street SUD shall be granted exceptions from the following Planning Code requirements:

1. Demolition of Industrial Buildings in PDR Districts - Replacement Requirement: The replacement requirement of Section 202.7 shall not apply.

2. Streetscape and Pedestrian Improvements: The streetscape and pedestrian improvement requirements set forth in Section 138.1 shall not apply in the 2000 Marin SUD.

3. Screening, Interior Landscaping, and Street Trees: The screening, interior landscaping, and street tree requirements set forth in Sections 142, 156(c), and 156(g) shall not apply in the 2000 Marin SUD.

4. Ground Floor Height: The ground floor height requirements set forth in Sections 145.5 and 210.3 shall not apply in the 2000 Marin SUD.

5. Better Roofs: The better roof requirements set forth in Section 149 shall not apply in the 2000 Marin SUD.

6. Off-Street Parking: The maximum off-street parking limits set forth in Section 151 shall not apply in the 2000 Marin SUD.

7. Bicycle Parking: The bicycle parking requirements set forth in Section 155.2 shall not apply in the 2000 Marin SUD.

8. Shower Facilities and Lockers: The requirements for shower facilities and lockers set forth in Section 155.4 shall not apply in the 2000 Marin SUD.

9. Car Sharing: The car sharing requirements set forth in Section 166 shall not apply in the 2000 Marin SUD.

10. Transportation Demand Management Program: The Transportation Demand Management Program requirements set forth in Sections 169-169.6 shall not apply in the 2000 Marin SUD.

11. Development Impact Fees: The development impact fees required by Article 4 of the Planning Code shall not apply in the 2000 Marin SUD.

Exhibit R

Exceptions for Planning Code Text Amendments

Flower Mart On-Site Project and/or Project Variant:
Exceptions would be incorporated into § 329(e)(3)(B)(vii), to provide the additional or amended exceptions specifically applicable to the Project site.

1. Transparency and Fenestration - § 249.78(c)(1)(F): The existing exception to the transparency and fenestration requirements under Section 249.78(c)(1)(F) is amended to include Morris Street, in addition to 5th Street between Brannan and Bryant Streets.

2. PDR floor-to-floor height - § 249.78(d)(10): An exception is added to the PDR floor-to-floor height requirements set forth in Section 249.78(d)(10), up to a maximum of 10% of the ground floor gross floor area to have less than a 17-foot floor-to-floor height.

3. Overhead Horizontal Projection and Mid-Block Alley Design and Performance Standards - § 136(c)(5) and § 270.2(e)(6): An exception is added to the overhead horizontal projection requirements set forth in Section 136(c)(5) and to the design and performance standards related to required mid-block alleys set forth in Section 270.2(e)(6), to allow for a maximum of three pedestrian bridges over a required mid-block alley, provided that the pedestrian bridges leave at least 15 feet of headroom and are situated no less than 50 feet apart. Notwithstanding Subsection (b), above, pedestrian bridges provided pursuant to this Subsection (f) shall be deemed obstructions permitted pursuant to Section 136, and POPOS area situated under any such pedestrian bridges shall count toward the total on-site POPOS area open to the sky.

4. POPOS Requirement - § 138: An exception is added to the POPOS requirements set forth in Section 138, such that if any required off-site POPOS cannot reasonably be developed and open for use prior to issuance of a first certificate of occupancy for the phase of construction that triggers the off-site POPOS requirement, the project sponsor may either (1) post a performance bond so as to provide the off-site POPOS at a later date; or (2) satisfy the requirement for off-site POPOS by paying the in-lieu fee established in Section 426 for each square foot of required open space not provided on- or off-site, up to a maximum of 5,300 square feet.

5. Parking Pricing Requirement - § 155(g): Exception to the parking pricing requirements set forth in Section 155(g), such that the otherwise applicable parking rate structure shall not apply to Flower Mart tenants or Flower Mart customers.

6. MUR Residential to Non-Residential Ratio - § 803.9(a) and 841: An exception is added to the requirement to provide three square feet of Gross Floor Area for Residential Use for every square foot of Non-Residential Use on the portion of this Key Site zoned MUR, set forth in Sections 803.9(a) and 841, if there is a dedication of land for affordable housing. Notwithstanding Section 413.7, the land so dedicated shall be: (a) at least 14,000 square feet; (b) zoned to allow Residential Use; (c) verified by the Mayor's Office of Housing and

Community Development as a site feasible for the development of affordable housing; (d) dedicated prior to issuance of the first Temporary Certificate of Occupancy for any building on the Key Site; and (e) located within the boundaries of either the Central SoMa, Eastern SoMa, or Western SoMa Area Plans.

7. Child-Care Facility Requirements - § 249.78(e)(4) and 414-414.15: An exception is added to the child-care facility requirements set forth in Section 249.78(e)(4) and Sections 414-414.15, if the project at the Key Site allows for at least 97,000 square feet of Wholesale Sales Use, such that the project sponsor may pay the in-lieu fee pursuant to Section 414.8.

Further Exceptions Subject to Board of Supervisors Approval of a Development Agreement for the project at this Key Site that provides for the relocation of, or funding for the relocation of, the existing on-site PDR use, the Planning Commission may grant the following exceptions:

8. PDR and Community Building Space Requirements - § 249.78(c)(5): And exception is added to the PDR and Community Building Space requirements in Section 249.78(c)(5); provided that, the project shall be required to dedicate at least 23,000 square feet of on-site Community Building Space or PDR.

9. PDR Replacement - § 202.8: An exception is added to the PDR replacement requirements set forth in Section 202.8.

10. Active Use Requirements - §249.78(c)(1)(A): An exception is added to the maximum dimensions for lobby frontages set forth in Section 145.1(b)(2)(C), such that lobbies exceeding such dimensions qualify as active uses under Section 145.1 and Section 249.78(c)(1)(A).

EXHIBIT S

Form of Transfer Agreement

TRANSFER AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

KR FLOWER MART LLC, a Delaware limited liability company

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AGREEMENT

FOR TRANSFER OF REAL ESTATE

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

RECITALS

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

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

C. The Property is currently used as a _____.

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

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

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

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

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

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

(c) "Development Agreement" is defined in Recital A.

(d) "Finally Granted" as defined in the Development Agreement.

(e) "Grant Deed" means the grant deed by which the Owner conveys the Property to CCSF in the form attached hereto.

(f) "Hazardous Materials" means:

(1) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

(2) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;

(3) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq., Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and

(4) any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction or maintenance, of residential developments, or typically used in office or residential activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine.

(g) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or any portion thereof.

(h) "Property" is defined in Recital B above.

(i) "Title Company" means Chicago Title Company, or such other title company as the parties may mutually select.

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

Section 1.2 Exhibits.

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

Exhibit A: Legal Description of the Property
Exhibit B: Form of Grant Deed

ARTICLE 2.
CONVEYANCE OF PROPERTY

Section 2.1 Conveyance.

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

Section 2.2 Opening Escrow.

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

Section 2.3 Close of Escrow.

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

Section 2.4 Closing Documentation.

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

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

Section 2.5 Owner Closing Conditions.

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

(a) The Approvals shall be Finally Granted.

(b) CCSF shall have executed and delivered into escrow the acceptance of the Grant Deed and the other documents required to close escrow in accordance with this Agreement.

(c) There shall exist no condition, event or act which would constitute a breach or default by CCSF, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default, under this Agreement.

(d) There shall be no pending litigation or other governmental agency proceeding against Owner, CCSF or the Property concerning this Agreement.

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

Section 2.6 CCSF Closing Conditions.

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

(a) There shall exist no condition, event or act which would constitute a breach or default by the Owner, or which, upon the giving of notice or the passage of time, or both, would constitute such a breach or default, under this Agreement.

(b) The Owner shall have executed and delivered into Escrow the Grant Deed and the other documents and funds required to close Escrow in accordance with this Agreement.

(c) Title Company shall be unconditionally prepared and committed to issue a Title Policy insuring fee title to the Property vested in CCSF, subject to the exceptions described in Section 2.7, and in such form as CCSF shall require, upon receipt of payment of the standard premiums paid therefor.

(d) There shall be no pending litigation or other governmental agency proceeding against Owner or CCSF concerning the Property or this Agreement. Any defense of such litigation shall be provided as set forth in the Development Agreement.

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

(f) CCSF shall have approved the physical, legal and environmental condition of the Property, and have determined that the Property is suitable for the development of affordable housing.

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

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

Section 2.7 Condition of Title.

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

(a) applicable building and zoning laws and regulations;

(b) the Grant Deed;

(c) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Grant Deed; and

(d) any other exceptions listed in the Title Report.

Section 2.8 Condition of Property.

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

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

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

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

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

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

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

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

Initialed on behalf of CCSF: _____

Section 2.9 Costs of Escrow and Closing.

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

ARTICLE 3.
PRIOR TO CLOSE OF ESCROW

Section 3.1 Responsibilities.

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

Section 3.2 Title Defects.

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

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

Section 3.3 Inspections.

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

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

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

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

Section 3.4 Taxes and Assessments.

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

Section 3.5 Hazardous Materials.

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

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

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

Section 3.6 Notice of Litigation.

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

ARTICLE 4.
ALTERNATIVE PERFORMANCE

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

ARTICLE 5.
DEFAULT AND REMEDIES

Section 5.1 Default.

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

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

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

Section 5.2 Remedies Cumulative.

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

ARTICLE 6.
GENERAL PROVISIONS

Section 6.1 Notices, Demands and Communications.

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

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

with a copy to:

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

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

Owner:

with a copy to:

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

Section 6.2 Forced Delay.

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

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

Section 6.3 Title of Parts and Sections.

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

Section 6.4 Applicable Law.

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

Section 6.5 No Brokers.

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

Section 6.6 Severability.

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

Section 6.7 Legal Actions and Attorneys' Fees.

Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of the County of San Francisco. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney's fees and costs incurred in such action. For purposes of this Agreement, reasonable attorneys' fees of CCSF's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same

number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred.

Section 6.8 Binding Upon Successors.

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

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

Section 6.9 Parties Not Co-Venturers.

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

Section 6.10 Time of the Essence.

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

Section 6.11 Action by CCSF.

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

Section 6.12 Representation and Warranties of Owner.

The Owner hereby represents and warrants to CCSF as follows:

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

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

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

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

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

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

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

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

Section 6.13 Entire Understanding of the Parties.

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

Section 6.14 Amendments.

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

Section 6.15 Counterparts; Multiple Originals.

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

Section 6.16 General Condition.

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

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

Section 6.17 Notification of Limitations on Contributions.

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

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

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

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

Section 6.19 Environmental Review.

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

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

[Signatures on following page.]

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

OWNER:

[name]

By: _____

Name: _____

Its: _____

CCSF:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA,
CITY ATTORNEY

By: _____
Charles Sullivan
Deputy City Attorney

12-8-19 / CAO
(CLEAN)

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code

Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

FOR PROPERTY AT 5th and BRANNAN STREETS

Block 3778: Lots 1B, 2B, 4, 5, 47 and 48

TABLE OF CONTENTS

EXHIBITS AND SCHEDULES

Exhibits

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this ____ day of _____, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and KR FLOWER MART LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer owns and operates the approximately 295,144 square foot site along Brannan Street between 5th and 6th Streets, on Assessor's Block 3778, Lots 001B, 002B, 004, 005, 047 and 048, composed of the 141,992 square feet of flower market, approximately 4,900 square feet of existing retail uses, 45,549 square feet of vacant PDR space, and surface parking lots, as more particularly described on Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed use development that will include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing approximately: 2,032,165 square feet of office space; 89,459 square feet of retail space; 115,000 rentable square feet of vendor space (including accessory retail space) for a new wholesale

flower market; 30 loading spaces; and 769 parking spaces; all as more particularly described in Exhibit B.1 (the "**Project**") and shown in Exhibit C.1. The exact numbers listed above may change, in keeping with Planning Department standard practices consistent with the Planning Code.

C. In order to satisfy the tenants' request to have an Permanent Off-Site Option (per Article 3), the Developer is also seeking entitlements for a revised project that replaces the on-site new wholesale flower market with approximately 113,036 square feet of other uses at the Project Site, consisting of a development with approximately: 2,061,380 square feet of office space; 90,976 square feet of retail space; 22,690 square feet of childcare use, including outdoor activity area; 9 loading spaces; and 632 vehicle parking spaces, all as more particularly described in Exhibit B.2 and shown in Exhibit C.2 (the **"Project Variant"**). All references in this Agreement to the "**Project**" shall mean (1) before selection under Article 3, both the Project and the Project Variant, and (2) following selection under Article 3, either the Project or the Project Variant, whichever is selected.

D. As part of the Project, Developer will relocate the existing flower market tenants to an interim facility constructed by Developer at the Temporary Relocation Site before Commencing Construction of the Project. Upon completion of the Project, Developer shall pay to move the flower market tenants back to the Project Site under the Project or to the Permanent Off-Site Facility under the Project Variant, as applicable. Alternatively, in the event the Permanent Off-Site Option is exercised, Developer may skip the Temporary Relocation Site and move the flower market vendors straight to the Permanent Off-Site Facility if the Permanent Off-Site Facility has been completed by the time Developer initially moves the flower market vendors from the Project Site. These commitments by Developer, together with certain rent

schedule commitments for a period of at least 34.5 years, are also made in a tri-party agreement among Developer, Tenant Association, and SFFM, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**").

E. The Project is anticipated to generate an annual average of approximately 8,050 construction jobs during construction and, on completion, an approximately $29.9 million annual increase in general fund revenues to the City and approximately $9.3 million annual increase in non-general fund revenues to the City.

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56. The Parties acknowledge that this Agreement is entered into in consideration of their respective burdens and benefits, including the representations and warranties, in this Agreement. The Parties also acknowledge that this Agreement is entered into to encourage and maintain effective land use planning.

G. As a result of the development of the Project in accordance with this Agreement, the City has determined that additional benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These

additional benefits are essential elements for this Agreement and include development of a new permanent home for the flower market, with subsidized rents, the dedication of a housing parcel, onsite childcare, workforce commitments and certain public improvements as described herein.

H. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), "**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project. Pursuant to Government Code Section 65867.5, this Agreement is a legislative act that is approved in an ordinance by the Board of Supervisors.

I. The Project Site is located in the recently adopted Central SOMA Plan area, which was approved by the Board of Supervisors on November 27, 2018 and December 4, 2018, pursuant to Ordinance Nos. 282-18, 296-18 and 280-18, Board of Supervisors File Nos. 180490, 180184, and 180185, respectively, which among other actions rezoned the Project Site for the CMUO (Central SOMA Mixed-Use Office) and MUR (Mixed Use Residential) zoning districts, and the 270-CS and 160-CS height and bulk districts.

J. The City analyzed the environmental impacts of the development density associated with the Project in the Central SOMA Plan Final Environmental Impact Report ("**Central SOMA FEIR**"), certified by the Planning Commission in Motion No. 20182, on May

10, 2018. Potential development at 2000 Marin Street, as the Temporary Relocation Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report ("**Bayview FEIR**"), which was certified by the San Francisco Redevelopment Agency on March 2, 2006. On July 3, 2019, the Environmental Review Officer ("**ERO**") issued a Community Plan Exemption ("**CPE**") and Addendum for the Project and the Temporary Relocation Site at 2000 Marin Street, including the mitigation monitoring and reporting program ("**MMRP**"). The CPE were prepared in accordance with CEQA and issued by the Planning Department in Case Nos. 2015-004256ENV. Copies of the Certificate of Determination are on file with the Board of Supervisors in File Nos. 190682 and 190681, and are incorporated herein by reference.

K. On July 18, 2019, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission granted Approvals for the Project and adopted the MMRP, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). The information in the Central SOMA FEIR, Bayview FEIR, and CPE were considered by the City in connection with approval of this Agreement.

L. On _____, 2019, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made

the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2019, the Board adopted Ordinance Nos. [_____] approving this Agreement (File No. 190682) and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2020.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "**Addendum**" has the meaning set forth in Recital J.

1.2 "**Administrative Code**" means the San Francisco Administrative Code.

1.3 "**Affiliate**" **or** "**Affiliates**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "**control**" means the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.4 "**Agreement**" means this Development Agreement, including the Recitals and Exhibits.

1.5 "**Alternative Permanent Site**" means a Viable site, in lieu of the Project Site, for the location of the Permanent Off-Site Facility, pursuant to Section 3 to this Agreement, in the event the Permanent Off-Site Option is exercised.

1.6 "**Alternative Option Period**" has the meaning set forth in Section 3.5.

1.7 "**Annual Review Date**" has the meaning set forth in Section 9.1.

1.8 "**Applicable Laws**" has the meaning set forth in Section 6.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.9 "**Approvals**" means the City approvals and entitlements listed on Exhibit K.

1.10 "**Assignment and Assumption Agreement**" has the meaning set forth in Section 13.2.

1.11 "**As Is Relocation Option**" has the meaning set forth in Section 3.8.1(b).

1.12 "**Associated Community Benefits**" is defined in Section 5.1.

1.13 **"Bayview FEIR"** shall have the meaning set forth in Recital J.

1.14 "**Board of Supervisors**" or "**Board**" means the Board of Supervisors of the City and County of San Francisco.

1.15 "**Building**" means the Market Hall Building, the Blocks Building, or the Gateway Building (or collectively, the "**Buildings**"), as generally described in Exhibit B.

1.16 **"Central SOMA FEIR"** shall have the meaning set forth in Recital J.

1.17 "**Central SOMA Plan**" shall have the meaning set forth in Recital I.

1.18 "**CEQA**" has the meaning set forth in Recital H.

1.19 "**CEQA Findings**" means the CEQA findings made by the Planning Commission and the Board of Supervisors in approving this Agreement.

1.20 "**CEQA Guidelines**" has the meaning set forth in Recital H.

1.21 "**CFD**" means a community facilities district formed over all of the Project Site that is established under the CFD Act in accordance with the Central SOMA Plan.

1.22 "**CFD Act**" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Act, as amended from time to time.

1.23 "**Chapter 56**" has the meaning set forth in Recital F.

1.24 "**City**" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.25 "**City Agency**" or "**City Agencies**" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFFD, SFMTA, SFPUC, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction or discretion of a City department that has not approved or consented to this Agreement in connection with the issuance or denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. The City actions and proceedings

subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

1.26 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

1.27 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including without limitation reasonable attorneys' fees and costs and third party costs relating to the Project, the Temporary Relocation Facility, and the Permanent Off-Site Facility, but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 10.6 when Developer is the prevailing party.

1.28 "**City Parties**" has the meaning set forth in Section 5.6.

1.29 "**City Report**" has the meaning set forth in Section 9.2.2.

1.30 "**City-Wide**" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.31 "**CMA**" is defined in Section 13.1.

1.32 "**Commence Construction**" means the commencement of physical construction of the applicable Building foundation on the Project Site.

1.33 "**Community Benefits**" has the meaning set forth in Section 5.1.

1.34 "**Community Benefits Program**" has the meaning set forth in Section 5.1.

1.35 "**CPE**" has the meaning set forth in Recital J.

1.36 "**Declaration of Restrictions**" has the meaning set forth in Section 3.11.

1.37 "**Default**" has the meaning set forth in Section 10.3.

1.38 "**Design Guidelines**" means the Key Development Site Guidelines adopted as part of the Central SOMA Plan.

1.39 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

1.40 "**Development Agreement Statute**" has the meaning set forth in Recital F, as in effect as of the Effective Date.

1.41 "**DPW**" means the San Francisco Department of Public Works.

1.42 "**Effective Date**" has the meaning set forth in Section 2.1.

1.43 "**Enacting Ordinance**" has the meaning set forth in Recital M.

1.44 "**Excusable Delay**" has the meaning set forth in Section 12.5.2.

1.45 "**Exercise Notice**" has the meaning set forth in Section 3.4.

1.46 **"Existing Flower Market"** means the improvements existing on the Project Site as of Effective Date, excluding the Zappettini Parcel.

1.47 "**Existing Standards**" has the meaning set forth in Section 6.2.

1.48 "**Existing Subtenant**" means each of those existing flower mart tenants who has a sublease for space at the Existing Flower Market as of the Relocation Date. Only Existing Subtenants in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent

Off-Site Facility under the Permanent Off-Site Option.

1.49 "**Existing Uses**" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date.

1.50 "**Extended Alternative Option Period**" has the meaning set forth in Section 3.4.

1.51 "**Federal or State Law Exception**" has the meaning set forth in Section 6.10.1.

1.52 "**Flower Market Obligations**" means Developer's obligations described in Article 3 and in subsection 5.1.1.

1.53 "**Foreclosed Property**" is defined in Section 11.5.

1.54 "**General Plan Consistency Findings**" has the meaning set forth in Recital K.

1.55 "**Gross Floor Area**" has the meaning set forth in Planning Code Section 102 as of the Effective Date.

1.56 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, including offsets for any applicable fee credits, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to the Transportation Sustainability Fee (per Planning Code Section 411A), the Jobs-Housing Linkage Fee (per Planning Code Section 413), Child Care Fee (per Planning Code Section 414), Art Fee (per Planning Code Section 429), School Impact Fee (California Education Code Section 17620), Eastern Neighborhoods Infrastructure Impact Fee (per Planning Code Section 423), or fees,

dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees (including CFD special taxes due under the Central SOMA Plan), SFPUC Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws. A sample calculation of the applicable Impact Fees and Exactions is included in Exhibit P.

1.57 "**Interim Lease**" means a lease entered into by Developer, as tenant, and the owner of the Temporary Relocation Site, for the temporary flower market, consistent with the requirements of the Tri-Party Agreement and this Agreement.

1.58 "**JHL Fee Credit**" has the meaning set forth in Section 6.9.1(a).

1.59 "**Later Approval**" means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, design review approvals, improvement agreements, use permits, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, street space permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.60 "**Law(s)**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" shall refer to any or all Laws as the context may require.

1.61 "**Law Adverse to City**" is defined in Section 6.10.4.

1.62 "**Law Adverse to Developer**" is defined in Section 6.10.4.

1.63 "**Litigation Extension**" has the meaning set forth in Section 12.5.1.

1.64 "**Losses**" has the meaning set forth in Section 5.6.

1.65 "**Master Tenant**" means the direct tenant or subtenant of Developer at any of the Existing Flower Market, the Temporary Relocation Facility, the Permanent Off-Site Facility, or the New Wholesale Flower Market, as applicable.

1.66 "**Material Change**" means any modification that would materially alter the rights, benefits or obligations of the City or Developer under this Agreement that is not consistent with the Central SOMA Plan or that (i) extends the Term, (ii) changes the permitted uses of the Project Site, (iii) decreases the Community Benefits, (iv) increases the maximum height, density, or bulk by more than ten percent (10%) the size of the Project or changes the parking ratios (other than as permitted under the Central SOMA Plan), or (vi) reduces the applicable rate for the Impact Fees and Exactions.

1.67 "**Mitigation Measures**" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.

1.68 "**MMRP**" means that certain mitigation monitoring and reporting program attached hereto as Exhibit L.

1.69 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site or the Alternative Permanent Site to secure an obligation made by the property owner or holder of a leasehold interest.

1.70 "**Mortgagee**" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.71 "**Municipal Code**" means the San Francisco Municipal Code.

1.72 "**New City Laws**" has the meaning set forth in Section 6.7.

1.73 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market (including 10,000 square feet of accessory retail) to be constructed on the Project Site as part of the Project, as more particularly described in the project description in Exhibit B.1.

1.74 "**Non-City Agency**" means Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement.

1.75 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.76 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.77 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee.

1.78 **"Permanent Off-Site Approvals"** means the Permanent Off-Site Building Approvals and the Permanent Off-Site Entitlement Approvals.

1.79 **"Permanent Off-Site Building Approvals"** means the first site permit or first building permit issued by the City or any City Agency, other than the Approvals, for the Alternative Permanent Site and/or the Permanent Off-Site Facility.

1.80 **"Permanent Off-Site Entitlement Approvals"** means any land use approval or entitlement issued by the City or any City Agency, other than the Approvals, that are necessary for the use of the Permanent Off-Site Facility and the Alternative Permanent Site as a wholesale flower market with ancillary retail uses, including without limitation Planning Commission and/or Planning Department entitlements, Planning Code amendments, and completion of CEQA review.

1.81 **"Permanent Off-Site Facility"** means a permanent flower market facility to be constructed at the Alternative Permanent Site, in lieu of the New Wholesale Flower Market at the Project Site, pursuant to Section 3 and Exhibit F-1 to this Agreement, in the event the Permanent Off-Site Option is exercised, as more particularly set forth in Section 3.7.

1.82 **"Permanent Off-Site Master Lease"** means a lease for the Alternative Permanent Site entered into by Developer, as the landlord, and Master Tenant, as the tenant, for a term of no less than 34.5 years or 35 years, as approved by the City, after the relocation of the Vendors.

1.83 **"Permanent Off-Site Notice"** has the meaning set forth in Section 3.3.

1.84 **"Permanent Off-Site Option"** means an option whereby in lieu of a New Wholesale Flower Market at the Project Site, a Permanent Off-Site Facility is constructed at the Alternative Permanent Site and leased pursuant to the Permanent Off-Site Master Lease.

1.85 "**Phase**" means either Phase 1(a), Phase 1(b) or Phase 1(c), as applicable.

1.86 "**Phase 1(a)**" means the issuance of a certificate of occupancy and/or final completion for the Blocks Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H. If the Stay Option is exercised, Phase 1(a) will not be deemed complete until all Post-Development Subtenants who have entered into a Post-Development Sublease have been relocated back to the Project as part of Developer's relocation program in accordance with the Tri-Party Agreement.

1.87 "**Phase 1(b)**" means the issuance of a certificate of occupancy and/or final completion for the Market Hall Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.88 "**Phase 1(c)**" means the issuance of a certificate of occupancy and/or final completion for the Gateway Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.89 "**Planning Code**" means the San Francisco Planning Code.

1.90 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.91 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

1.92 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.

1.93 **"Post-Development Subtenant"** means each of those Existing Subtenants and Pre-Development Subtenants who pursuant to the terms of the Tri-Party Agreement enter into

a Post-Development Sublease with the owner or master lessor thereof at the New Wholesale Flower Market.

1.94 **"Post-Development Sublease"** means a lease agreement at the New Wholesale Flower Market between Developer or the master lessor of the New Wholesale Flower Market and each Post-Development Subtenant.

1.95 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who, in accordance with the terms of the Tri-Party Agreement (and the Pre-Development Lease defined therein), entered into a Pre-Development Sublease for space at the Existing Flower Market or the Temporary Relocation Site, as applicable. Only Pre-Development Subtenants that remain in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent Off-Site Facility under the Permanent Off-Site Option.

1.96 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.97 "**Project**" means either the Project or the Project Variant, once determined in accordance with Article 3, together with Developer's rights and obligations under this Agreement.

1.98 **"Project Open Space"** means the privately owned, publicly accessible open space described in Exhibit I.

1.99 "**Project Site**" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

1.100 **"Project Variant"** means the mixed use development project described in Recital C and Exhibit B.2 and the Approvals.

1.101 **"Public Health and Safety Exception"** has the meaning set forth in Section 6.10.1.

1.102 **"Public Improvements"** means the following improvements: (i) new sidewalks and sidewalk amenities at a width and design to be determined by DPW and Planning Department staff in accordance with the Better Streets Plan, Central SOMA Plan, and Planning Code, (ii) curbs on the portions of Brannan, Fifth, Sixth, and Morris Streets adjoining the Project Site as outlined in the drawings attached to the Approvals from the Planning Commission; (iii) off-site public open space improvements under the elevated portion of Interstate-80 between.

1.103 **"Relocation Date"** means the date on which all of the Vendors who wish to be relocated to the Temporary Relocation Facility, or to the Permanent Off-Site Facility, as applicable, are relocated by Developer in accordance with the Tri-Party Agreement.

1.104 **"Relocation Matters"** has the meaning set forth in Section 3.3.

1.105 **"Relocation Option During Litigation Pendency"** has the meaning set forth in Section 3.8.2(d).

1.106 **"Relocation Site Approval"** means land use approvals and Planning Code exceptions applicable to the Temporary Relocation Site at 2000 Marin set forth on Exhibit Q, and any land use approvals, entitlement, or permit, from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Relocation Site located at 2000 Marin by the Existing Subtenants and Pre-Development Subtenants during the construction of the Project.

1.107 **"SFFD"** means the San Francisco Fire Department.

1.108 "**SFFM**" means San Francisco Flower Mart LLC, a California limited liability company.

1.109 "**SFMTA**" means the San Francisco Municipal Transportation Agency.

1.110 "**SFPUC**" means the San Francisco Public Utilities Commission.

1.111 "**SFPUC Capacity Charges**" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

1.112 "**Stay Notice**" has the meaning set forth in Section 3.3.

1.113 "**Stay Option**" means Developer construction of a New Wholesale Flower Market at the Project Site.

1.114 "**Subdivision Code**" means the San Francisco Subdivision Code.

1.115 "**Subdivision Map Act**" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.116 "**Temporary Relocation Facility**" means the temporary flower market facility to be built by Developer (if at all) at no cost to the City or to the flower market Vendors, and meeting the requirements of Exhibit E.

1.117 **"Temporary Relocation Site"** means a Viable site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Relocation Facility. In the event the Stay Option is exercised, the Temporary Relocation Site will be at 2000 Marin so long as no other mutually agreeable Viable temporary site is selected by the Parties and Developer has entered into an Interim Lease for 2000 Marin.

1.118 "**Tenant Association**" means the San Francisco Flower Market Tenants' Association.

1.119 "**Tenant Option Period**" has the meaning set forth in Section 3.3.

1.120 "**Term**" has the meaning set forth in Section 2.2.

1.121 "**Third-Party Challenge**" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals, Later Approvals, the CPE or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

1.122 "**Transfer," "Transferee" and "Transferred Property**" have the meanings set forth in Section 13.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

1.123 "**Transfer Agreement**" means that certain Agreement for Transfer of Real Estate attached as Exhibit S for the transfer of property outside the Project Site from Developer to the City to be used by the City for the development of affordable housing or to fund the development of affordable housing, as may be determined by City.

1.124 "**Transfer Parcel**" means vacant, unimproved land within the Central or Western SoMa Plan Area, not less than 14,000 square feet, identified by Developer and acceptable to MOHCD, for conveyance to the City in accordance with the Transfer Agreement;

1.125 "**Transportation Program**" means the transportation program set forth in Exhibit J.

1.126 "**Tri-Party Agreement**" means that certain Tri-Party Agreement among

Developer, the Tenant Association, and the SFFM, dated as of June 26, 2015, and amended and restated on _____, 2019.

1.127 "**Vendors**" means the Existing Subtenants and Pre-Development Subtenants that wish to be relocated to the Temporary Relocation Facility or the Permanent Off-Site Facility, as the context requires, in accordance with the Tri-Party Agreement and either the Pre-Development Master Lease or Permanent Off-Site Master Lease, as applicable.

1.128 "**Vested Elements**" has the meaning set forth in Section 6.1.

1.129 "**Viable**" has the meaning set forth in Section 3.7 with respect to Permanent Off-Site Facility. For a Temporary Relocation Site, "Viable" means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary retail uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can accommodate the design and specifications set forth in Exhibit E for the Temporary Relocation Facility; (iv) the site is owned by Developer or under an Interim Lease with Developer; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit E for the Temporary Relocation Facility, or on which such a building could be constructed by Developer.

1.130 "**Workforce Agreement**" means the Workforce Agreement attached hereto as Exhibit O.

1.131 "**Zappettini Parcel**" means Assessor's Lots 047 and 048 on Block 3778.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative.

2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter (the "**Initial Term**"), unless extended or earlier terminated as provided herein, provided however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to terminate this Agreement with respect to the first Phase upon completion of the first Phase, including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the first Phase during the Initial Term and thereafter continues to diligently prosecute the first Phase to completion, and is not in Default (or has cured a Default pursuant to Section 10.3) under this Agreement between the date of exercise and the date the Initial Term expires, then Developer shall have the right to extend the term of this Agreement for an additional five (5) years (the "**Extended Term**") by delivering to the City, at any time during the last year of the Initial Term, a notice of extension. The 5-year extension shall be automatic upon Developer's delivery of the extension notice unless Developer is in Default (not including a Default that was cured pursuant to Section 10.3) at the time Developer sends the notice or before the start of the Extended Term, in which case the City may reject the notice by written notice of rejection to Developer. The term of this Agreement (the "**Term**") shall mean the Initial Term plus, if applicable, the Extended Term. The performance period or the term for any Approval or Later Approval shall be for the longer of the Term or the performance period or term otherwise applicable to such Approval or Later Approval. Following expiration of the Term, this

Agreement shall be deemed terminated and of no further force or effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2.3 Phasing. Developer anticipates completing Phase 1(a) first, before Phase 1(b) or Phase 1(c); however, Developer may alter the anticipated phasing, including completion of multiple Phases simultaneously, so long as the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) described in Exhibit H are completed prior to Developer's receipt of the first certificate of occupancy for any Phase or portion thereof.

3. TEMPORARY RELOCATION SITE AND PERMANENT OFF-SITE FACILITY

3.1 Temporary Relocation Site. Before Developer may begin demolition on the portion of the Project Site other than the Zappettini Parcel, Developer shall (a) obtain the exclusive right to occupy (based on an Interim Lease or ownership interest) improved or unimproved real property for use of the Temporary Relocation Site, consistent with the requirements of the Tri-Party Agreement and this Agreement, (b) complete the Temporary Relocation Facility in accordance with the specifications set forth in Exhibit E, and (c) move the Vendors that occupy the Existing Flower Market as of the Relocation Date and wish to be relocated to the Temporary Relocation Facility at no cost to the Vendors in accordance with the Tri-Party Agreement. Developer shall ensure that the Vendors have the continuing right to occupy the Temporary Relocation Facility under the Interim Lease, on the same terms of their then-existing subleases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than six (6) years, including any extension options, from the Interim Lease commencement date; provided the City may agree to a shorter term if the City determines that less time is needed for the completion of construction of the New Wholesale Flower Market

or the Permanent Off-Site Facility, whichever is the case. Notwithstanding the foregoing, Developer may skip the Temporary Relocation Facility and move the Vendors straight to the Alternative Permanent Site if the Permanent Off-Site Option is selected when the Permanent Off-Site Facility at the Alternative Permanent Site is complete.

3.2 Permanent Off-Site Option or Stay Option. As set forth in this Article 3, the City shall elect either the Permanent Off-Site Option or the Stay Option. Following the City's election, Developer shall either (i) complete the New Wholesale Flower Market at the Project Site under the Stay Option, or (ii) complete the Permanent Off-Site Facility at the Alternative Permanent Site under the Permanent Off-Site Option.

3.3 Tenant Option Period. Tenant Association, acting through its counsel, will send to the City, with a copy to Developer, a notice requesting that the City proceed with the Stay Option in the form attached as Exhibit G-2 (the "**Stay Notice**") or the Permanent Off-Site Option in the form attached as Exhibit G-3 (the "**Permanent Off-Site Notice**") on or before thirty (30) days after the Effective Date ("**Tenant Option Period**"). The Stay Notice or the Permanent Off-Site Notice shall be sent by the Tenant Association's counsel, confirming that the Tenant Association has affirmatively voted and approved, at a duly noticed and held election in accordance with the Tenant Association's bylaws to choose either the Stay Option or the Permanent Off-Site Option, and shall include, substantially in the form and content in the "Tenant Association Release and Indemnity" included in Exhibits G-2 and G-3, (1) a release of any claims by the Tenant Association against the City regarding this Agreement, the Tri-Party Agreement and any other related documents, the Temporary Relocation Site, New Wholesale Flower Market, the Alternative Permanent Site, and the relocation of Vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (2) a release of any claims by the

Tenant Association against Developer for the Relocation Matters, but excluding all of Developer's prospective obligations under this Agreement and any other agreement between the Tenant Association and Developer; and (3) an indemnity by the Tenant Association, in favor of the City and Developer, for any claims made by any flower market vendor challenging any of the Relocation Matters.

3.4 Stay Option Exercise. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Tenant Option Period, the City will send the Exercise Notice in the form attached as Exhibit G-1 (the "**Exercise Notice**") to Developer within five business (5) days after receipt of the Stay Notice, electing the Stay Option if, on before the date that is sixty (60) days after the expiration of the Tenant Option Period ("**Alternative Option Period**"), which may be extended at Developer's request by an additional thirty (30) days or longer ("**Extended Alternative Option Period**"), Developer delivers to the City, with a copy to the Tenant Association, an executed Interim Lease for the Temporary Relocation Facility or proof of Temporary Relocation Site ownership. If the Stay Option is exercised the Permanent Off-Site Option shall terminate and be no further force or effect. Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.

3.5 Permanent Off-Site Option Exercise. If the Tenant Association elects the Permanent Off-Site Option and sends the Permanent Off-Site Notice to the City before the end of the Tenant Option Period, the City shall exercise the Permanent Off-Site Option if, on or before the expiration of the Alternative Option Period or the Extended Alternative Option Period, as applicable, Developer delivers to the City, with a copy to the Tenant Association, preliminary conceptual plans for a Viable location in San Francisco for the Permanent Off-Site Facility, and the City agrees that the proposed Alternative Permanent Site is Viable. If the Developer does not

deliver the above-mentioned conceptual plans in a timely manner or if the City does not agree that the Alternative Permanent Site is Viable, the Extended Alternative Option Period is extended until such time when the plans are delivered to the City or the City agrees that the Alternative Permanent Site is Viable, as applicable. The City shall exercise the Permanent Off-Site Option by delivery of the Exercise Notice to Developer in the form attached as Exhibit G-1 within five (5) business days after receipt of the above-mentioned information from Developer.

3.6 Tenant Failure to Exercise; Final City Election. If the City does not receive the Permanent Off-Site Notice or the Stay Notice before the end of the Tenant Option Period, the City has the right, in its sole discretion, to elect either the Permanent Off-Site Option or the Stay Option based upon all of the information available to it. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within fifteen (15) days after the Alternative Option Period or the Extended Alternative Option Period, as applicable. If the City fails to send the Exercise Notice by the end of such fifteen (15) day period, then Developer shall have the right to choose between the Stay Option and the Permanent Off-Site Option.

3.7 Permanent Off-Site Facility Construction. The Permanent Off-Site Option is designed to provide for the renovation of existing building(s) and/or construction of new building(s) in order to create a permanent wholesale flower market at an Alternative Permanent Site by Developer (the "**Permanent Off-Site Facility**"). The Permanent Off-Site Facility constructed by Developer shall be on a Viable Alternative Permanent Site. "**Viable**" for purposes of an Alternative Permanent Site means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is not a publicly owned site; (iii) the site is mutually agreeable to Developer and Tenant Association; (iv) the site is either owned by Developer or leased by Developer for a

term of at least 34.5 years or 35 years, as approved by the City; and (v) any lienholder with an interest in the site superior to the Permanent Off-Site Master Lease has provided reasonable non-disturbance protections to the Master Tenant and to any subtenants under the Permanent Off-Site Master Lease.

3.8 Completion of Design and Construction Documents. Following exercise of the Permanent Off-Site Option, Developer shall complete design and construction documents for the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease, submit applications for the Permanent Off-Site Approvals to the City, and shall construct the Permanent Off-Site Facility in accordance with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease.

3.8.1 If the Permanent Off-Site Option is exercised and any of the following circumstances occur: (i) the Permanent Off-Site Entitlement Approvals are not initially granted within the approval deadlines for environmental determinations specified by Section 1(a) of Executive Directive No. 17-02 issued by Mayor Edwin M. Lee starting from the date of receipt of Developer's complete response to the first Notice of Planning Department Requirements issued by the Planning Department, subject to a 60-day cure period for the City (such period to commence upon written notice from Developer to the City and SFFM) to initially grant such Permanent Off-Site Entitlement Approvals and an extension period of up to one hundred twenty (120) days in the event that an administrative appeal is filed challenging the Permanent Off-Site Entitlement Approvals, and provided that in no case shall the approval time period be less than nine (9) months; (ii) the Permanent Off-Site Building Approvals are not finally granted within nine (9) months starting from later to occur of the date the Permanent Off-Site Entitlement

Approvals are initially granted or the date of acceptance by the City of a complete application for Developer's first site permit or first building permit for the Alternative Permanent Site, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the City to finally grant such Permanent Off-Site Building Approvals and subject to an extension for the period of appeal in the event that the Permanent Off-Site Entitlement Approvals are appealed, up to 120 days; (iii) an administrative appeal or judicial challenge is filed by Tenant Association, SFFM, or any vendor at the Existing Flower Market challenging the Permanent Off-Site Approvals, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for such parties to withdraw the administrative appeal(s) or expunge judicial challenge(s); or (iv) a judicial challenge is filed by any party challenging the Alternative Permanent Site Approvals for the Permanent Off-Site Facility that results in the issuance of an injunction prohibiting the issuance of building permits, commencement of construction, and/or occupancy of the Permanent Off-Site Facility pursuant to the Permanent Off-Site Approvals, subject to a 120-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the injunction to be lifted, then all of the following shall apply:

(a) Developer may terminate the Pre-Development Lease by delivering six (6) months prior written notice to SFFM, with a copy to the City, and notwithstanding Section 3.1 requirements regarding commencement of demolition on the Project Site to the contrary, upon the Pre-Development Lease termination Developer may begin demolition of the Project Site and construction of the Project; and

(b) If Developer terminates the Pre-Development

Lease, then upon delivery of Developer's termination notice pursuant to Section 3.8.1(a), Developer shall provide SFFM a right to relocate to the Permanent Off-Site Facility in an "as is" condition ("**As Is Relocation Option**"), which (unless SFFM elects to require Developer to construct the Permanent Off-Site Facility as described in Section 3.8.1(c) below) means the condition existing at the Alternative Permanent Site as of SFFM's exercise of the As Is Relocation Option; and

(c) Within 60 days of the receipt of Developer's termination notice, SFFM shall either: (i) accept the As Is Relocation Option, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent Off-Site Facility in an "as is" condition per Section 3.8.1(b), and Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000) for any tenant improvements SFFM elects to complete to the Permanent Off-Site Facility; or (ii) reject, or fail to timely exercise, the As Is Relocation Option, in which case upon the effective date for the termination of the Pre-Development Lease, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the

Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco. In the cases described in Section 3.8.1 (i), (ii), or (iv) above and if SFFM accepts the As Is Relocation Option pursuant to this Section 3.8.1(c), then in addition to its choice of remedies described in the foregoing sentence and despite termination of the Pre-Development Lease, in lieu of the initial payment of $15,000,000, SFFM may choose to require Developer to diligently pursue the Permanent Off-Site Approvals and complete construction of the Permanent Off-Site Facility consistent with Exhibit F-1 and the Permanent Off-Site Master Lease for a period of twenty-four (24) months after SFFM's election, and if completion (i) occurs by the end of such period then upon completion Developer shall relocate all Vendors who wish to be relocated to the Permanent Off-Site Facility, or (ii) does not occur by the end of such period then Developer shall pay $15,000,000 to SFFM upon expiration of such period.

3.8.2 In the event that a filing and pendency of a judicial challenge on the Permanent Off-Site Approvals exists and was filed by a party other than Tenant Association, SFFM, or any vendor at the Existing Flower Market, and no injunction is issued preventing the issuance of the Permanent Off-Site Approvals, then during the pendency of such challenge Developer may not effect termination of the Pre-Development Lease prior to the conclusion of such challenge and may either wait for resolution of the challenge, or may proceed with the construction of the Permanent Off-Site Facility consistent with the Permanent Off-Site Approvals and Exhibit F-1 in which case all of the following shall apply:

(a) Unless prohibited by injunction, City Agencies shall not stop the processing or issuance of building permits or approvals due to such judicial challenge and, provided that Developer obtains any necessary Later Approvals, shall allow development of the Permanent Off-Site Facility to proceed consistent with the Permanent Off-Site Approvals; and

(b) Developer shall give SFFM a right to relocate to the Permanent Off-Site Facility after the Developer's completion of the Permanent Off-Site Facility in accordance with Exhibit F-1 and pursuant to the Permanent Off-Site Approvals ("**Relocation Option During Litigation Pendency**"); and

(c) Within 60 days of its receipt of the Developer's Relocation Option During Litigation Pendency notice, SFFM shall either: (i) accept the Relocation Option During Litigation Pendency, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for SFFM acceptance of any limitations or restrictions (whether occupancy or improvement related) which may be imposed by the verdict in the judicial challenge (subject to SFFM's right to pursue any approvals or other authorizations to eliminate any compliance issues established by such a verdict), in which case Developer shall complete construction of the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1, and upon the Relocation Date the Pre-Development Lease shall terminate; or (ii) reject or fail to timely exercise the Relocation Option During Litigation Pendency, in which case the Pre-Development Lease shall terminate no less than six (6) months after delivery of the Relocation Option During Litigation Pendency notice, Developer shall provide SFFM a payment of Ten Million Dollars ($10,000,000),

and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco.

3.8.3 In the event that the issuance of any element of the Permanent Off-Site Approvals is delayed as a result of (i) Developer's failure to provide requested additional information or materials from City Agencies or to respond to City Agencies in a prompt and expeditious manner, or (ii) the filing or pendency of an administrative appeal or judicial challenge to any of the Permanent Off-Site Approvals by Developer or its Affiliate, then the corresponding period for the affected Permanent Off-Site Approval shall be extended by the length of such delay.

3.9 City Decisions. Except where otherwise noted, all discretionary decisions relating to City actions under this Article 3 shall be made jointly by the Planning Director and the OEWD Director of Development. The Planning Director and the OEWD Director of Development will consult other City officials as they deem appropriate.

3.10 No City Liability. Following exercise of the Permanent Off-Site Option, OEWD and Planning staff shall use good faith efforts to assist Developer with the development of the Permanent Off-Site Facility at the Alternative Permanent Site. Following exercise of the Stay Option, OEWD and Planning staff shall use good faith efforts to monitor and enforce Developer's obligations to build the New Wholesale Flower Market at the Project Site. But nothing in this Agreement shall create any City liability to Developer, to the Tenant Association, to SFFM, or to any flower market vendor relating to the New Wholesale Flower Market, the Permanent Off-Site Facility, or to the Relocation Matters. All interested persons are given notice, and understand and agree, that completion of the New Wholesale Flower Market or the Permanent Off-Site Facility will likely involve many challenges, and that no particular outcome can be guaranteed. By entering into this Agreement, the City is not guarantying the successful completion of the replacement market or any other result. The City would not be willing to enter into this Agreement without this provision. Without limiting Developer's indemnity obligations in this Agreement, if and to the extent that City is required to expend any funds or staff time defending this Agreement or any discretionary decisions made by the City related to this Article 3 or the Relocation Matters from a claim made by the Tenant Association or any flower market vendor, such funds and the costs of such staff time shall be included in City Costs.

3.11 Tri-Party Agreement; Declaration of Restrictions. Developer shall comply with its key obligations under the Tri-Party Agreement, including compliance with the rent schedule provided in Exhibit D and other key obligations summarized in Exhibit D. If the Permanent Off-Site Option is exercised, then prior to the earlier to occur of (i) issuance of the first certificate of occupancy for any portion of the Project (provided that SFFM has not rejected or failed to timely exercise either the As Is Relocation Option or the Relocation Option during

Litigation Pendency pursuant to Section 3.8.1 or Section 3.8.2, in which case no Declaration of Restrictions shall be recorded against the Alternative Permanent Site), or (ii) commencement of the term of the Permanent Off-Site Master Lease, Developer shall record a Declaration of Restrictions (the "**Declaration of Restrictions**") against the Alternative Permanent Site consistent with the form of document attached in Exhibit D-1 and revised as appropriate with such terms and conditions relating to this Agreement, the Permanent Off-Site Master Lease, and the Alternative Permanent Site, as the City may reasonably require. The term of the Declaration of Restrictions shall end upon termination of the Permanent Off-Site Master Lease and any Deemed Consent Subleases (as defined in the Permanent Off-Site Master Lease), and upon such termination the Declaration of Restrictions shall no longer affect the Alternative Permanent Site. The City requires recordation of the Declaration of Restrictions to assure that Developer's commitments to the rent subsidies pursuant to the Permanent Off-Site Master Lease and its provision of the public benefit of a continued viable wholesale flower market in San Francisco are enforced. Developer's breach of the obligations described in Exhibit D or in the Declaration of Restrictions, following the notice and cure periods set forth in Section 10.3, shall be a material breach of this Agreement. Developer will provide the City with any information it requests relating to the Declaration of Restrictions, the Alternative Permanent Site, and the Permanent Off-Site Facility in a timely manner, including without limitation information customarily requested by the City's Assessor pursuant to California Revenue & Taxation Code, Sections 71, 441, and 470 and the right to audit revenues and expenditures relating to the Alternative Permanent Site and the Permanent Off-Site Facility. The provisions of this Section 3.11 shall survive the expiration of this Agreement.

4. GENERAL RIGHTS AND OBLIGATIONS

4.1 Project and Project Variant's Compliance with Certain Design Requirements. Concurrently with the approval of this Agreement, certain Planning Code Text Amendments applicable to the Project were approved by the Board of Supervisors, as listed in Exhibit R.

4.2 Development of the Project. Developer shall have the vested right to develop the Project and the Temporary Relocation Facility in accordance with and subject to the provisions of this Agreement, the Approvals, Later Approvals, and Relocation Site Approvals with respect to 2000 Marin, and the City shall consider and process all Later Approvals for development of the Project and the Temporary Relocation Facility at the Temporary Relocation Site, in accordance with and subject to the provisions of this Agreement. The Parties acknowledge (i) that immediately before the approval of this Agreement, the City approved and granted the Approvals for the Project as listed in Exhibit K, and (ii) that Developer may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals, as needed.

4.3 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement.

4.4 Community Facility Districts. The City intends to form a CFD under the CFD Act to finance or seek reimbursement of certain costs as set forth in the SOMA Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the

CFDs or other charges set forth in the Central SOMA Plan, or the issuance of additional bonds or other financing secured by CFD special taxes or the application of bond proceeds consistent with the SOMA Plan. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Central SOMA Plan fees or the CFD special taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in any sale agreement or lease for all or part of the Project Site.

4.5 Transfer Parcel. Before the issuance of the first construction document for the Project, the City, acting through MOHCD, and Developer shall enter into the Transfer Agreement, substantially in the form attached as Exhibit S, for the Transfer Parcel proposed by Developer and approved by MOHCD. Developer shall convey the Transfer Parcel to the City in accordance with the Transfer Agreement on or before issuance of the first certificate of occupancy for any portion of the Project's first building. The City shall use the Transfer Parcel to develop affordable housing; provided if the City decides after acceptance that it cannot develop affordable housing on the Transfer Parcel, the City may sell the Transfer Parcel and use the net sales proceeds for affordable housing within the boundaries of Central SoMa, Eastern SoMa or Western SoMa Area Plans.

5. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

5.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 5

(the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is an essential element to this Agreement and is tied to a specific phase of the Project, as described in the Phasing Plan or elsewhere in this Agreement (with each Phase, an "**Associated Community Benefit**"). Time is of the essence with respect to the completion of the Community Benefits.

5.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefit Programs**"):

(a) the construction and development of the New Wholesale Flower Market on the Project Site or alternatively, if the Permanent Off-Site Option is exercised, the construction and development of the Permanent Off-Site Facility at the Alternative Permanent Site in accordance with Article 3;

(b) the rent subsidies per the Tri-Party Agreement, in accordance with the rent schedule included in Exhibit D and the Declaration of Restrictions attached as Exhibit D-1;

(c) the relocation of the Existing Tenants and Pre-Development Subtenants to the Temporary Relocation Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or to the Alternative Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party

Agreement, including the requirement that all Existing Tenants and Pre-Development Subtenants shall be moved together at one time (the collective obligations in subparagraphs (a) through (c) shall be referred to as the "**Flower Market Obligations**");

(d) the Workforce Program, as described in Exhibit O;

(e) the Project Open Space and Public Improvements, as described in Exhibit I;

(f) the Transportation Demand Management Program attached as Exhibit J;

(g) conveyance of the Transfer Parcel to the City, in accordance with the Transfer Agreement, at no cost to City;

(h) under the Project Variant, Developer shall construct a subsidized child care center in Phase 1(a), consisting of approximately 23,000 square feet at the Blocks Building, for lease to a qualified non-profit child care operator for ten (10) years at a cost not exceeding landlord's actual costs for operating expenses;

(i) the payment of $5 million to Mercy Housing California, to pay for costs related to the Sunnydale Hub project, on or before the issuance of the first construction document for the Project; and

(j) the payment of $200,000 within sixty (60) days following the Effective Date, and each anniversary thereafter annually for a period of ten (10) years (i.e. a total of $2,000,000), to support street cleaning efforts in SoMa.

5.1.2 Conditions to Performance of Community Benefits. Developer's obligation to perform each Associated Community Benefit is expressly conditioned upon each and all of the following conditions precedent:

(a) All Approvals and Later Approvals for the applicable Phase to which the Associated Community Benefit is tied shall have been Finally Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and Relocation Site Approvals with respect to 2000 Marin, if applicable) have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit with a Phase, the City may withhold a certificate of occupancy for the Building in that Phase until the required Associated Community Benefit is completed or Developer has provided the City with adequate security for completion of such Associated Community Benefit (*e.g.,* a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney); and

(b) Developer shall have Commenced Construction of the Building in the applicable Phase to which the Associated Community Benefit applies.

5.2 No Additional CEQA Review Required; Reliance on CPE and Addendum for Later Approvals. The Parties acknowledge that the CPE and Addendum prepared for the Project and 2000 Marin as the Temporary Relocation Site, respectively, complies with CEQA. The Parties further acknowledge that (a) the CPE and Addendum contain a thorough environmental analysis of the Project, including the Temporary Relocation Site (with respect to 2000 Marin), and demonstrate that the Project's impacts were previously analyzed in the Central SOMA FEIR and the Addendum, as the case may be; (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings. Accordingly, the City

does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the CPE and Addendum, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with the Temporary Relocation Site or a change in the location of the Temporary Relocation Site, the Permanent Site, affordable housing dedication site, or any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

5.3.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all mitigation measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the CPE and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

5.3 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's

contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

5.4 City Cost Recovery.

5.4.1. Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 6.7.

5.4.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

5.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 5.5.4 from the City.

5.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office,

including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 5.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

5.4.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90)

days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

5.5 Prevailing Wages. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720 - 1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all persons performing labor in the construction of Public Improvements under this Agreement will be: (1) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), and (2) provided the same hours, working conditions, and benefits as provided for similar work performed in San Francisco County in Administrative Code section 6.22(f). Developer further agrees to employ Apprentices on the Public Improvement work in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing the Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. City's Office of Labor Standards Enforcement ("**OLSE**") enforces labor laws, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

5.6 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if

requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification

obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

6. VESTING AND CITY OBLIGATIONS

6.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Accordingly, the City in granting the Approvals and vesting them through this Agreement is limiting its future discretion with respect to Later Approvals and Relocation Site Approvals to the extent they include elements that were approved as part earlier Approvals. The criteria for City review and approval of Later Approvals is set forth in Section 6.3. Consequently, the City shall not use its discretionary authority in considering and approving an application for Later Approvals or Relocation Site Approvals with respect to 2000 Marin to change the policy decisions reflected by the Approvals or otherwise to prevent or to delay development of the Project or the Project Variant as set forth in the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access and parking (including parking ratios); and the Prop. M allocation made for the Project on the Effective Date (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable

Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals and Relocation Site Approvals with respect to 2000 Marin, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval and Relocation Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

6.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 6.7, and (iii) this Agreement (collectively, "**Applicable Laws**").

6.3 Criteria for Later Approvals. Developer shall be responsible for obtaining applicable Later Approvals before the start of construction that requires such approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval based upon an item or element that is consistent the Approvals, and shall consider all such applications in accordance with City's customary practice, normal discretion and Applicable Laws, subject to the requirements of this Agreement. The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency

shall exercise its discretion consistent with the Approvals and the Planning Code, and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" or the Temporary Relocation Site under this Agreement.

6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from Developer of a completed application (with any required supporting documentation) for one of more Later Approvals, Relocation Site Approvals, or Permanent Off-Site Approvals, the City shall use reasonable efforts to promptly commence and complete all steps necessary to act on such applications in a timely way and in accordance with applicable Laws.

6.5 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Mechanical Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, and the Public Works Code and Subdivision Code and other uniform construction codes applicable on a City-Wide basis. This shall not be construed to prohibit exceptions, equivalencies, or other administrative relief available under such Codes.

6.6 Denial of a Later Approval, Relocation Site Approval, or Permanent Off-Site Approval. If the City denies any application for a Later Approval that implements a Building that is part of the Project or a Relocation Site Approval or Permanent Off-Site Approval for the Temporary Relocation Site or Alternative Permanent Site, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with this Agreement, earlier

Approvals, and Applicable Laws, and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, earlier Approvals and Applicable Laws, and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

6.7 New City Laws. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**New City Laws**") shall apply to the Project, the Project Site, and the Temporary Relocation Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

6.7.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project or the Temporary Relocation Site at 2000 Marin, or any part thereof, or otherwise require any reduction in the square footage, number, or size of the proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from those permitted under the Approvals;

(b) limit or reduce the height, bulk, or mass of the Project, or any part thereof, or otherwise require any reduction in the height, bulk, or mass of individual Buildings or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, or the amount or location of parking or loading from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the consideration of the Phase 1(b) Office Allocation as specified in Section 6.8(b), or demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

(i) impose any regulation or other requirement that controls commercial rents or purchase prices charged within the Project or on the Project Site, except as set forth in this Agreement and the Tri-Party Agreement;

(j) materially limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 6.9.2); or

(l) Reduce the amount of allowable parking or loading for the Project or the Temporary Relocation Site at 2000 Marin; or

(m) Negatively alter the Phase 1(b) Office Allocation priority in Section 6.8(b).

6.7.2 Developer may, at its sole discretion, elect to have a New City Law that conflicts with this Agreement be applied to the Project or the Project Site by giving the City written notice of its election to have a New City Law applied, in which case such New City Law shall be deemed to be an Existing Standard;

6.7.3 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge parcels within the Project Site as is required or may be desirable in order to developer a particular phase of the Project the Project or to lease, mortgage or sell all or some portion of it. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals or Later Approvals.

6.8 Proposition M Office Allocation. The Project includes up to 2,061,380 gross square feet ("**GSF**") of office development proposed to be constructed in three phases: (i)

Phase 1(a) with up to 1,384,578 GSF of office, (ii) Phase 1(b) with up to 351,895 GSF of office; and (iii) Phase 1(c) with up to 324,907 GSF of office. Before the Effective Date, by Motion No. 20485 (the "**Office Allocation Motion**"), the Planning Commission adopted findings pursuant to Planning Code Section 321(b)(1) that up to 2,061,380 GSF of office development at the Project Site contemplated by this Agreement and the Central SOMA Plan and Design Guidelines promotes the public welfare, convenience and necessity, and in doing so it considered the criteria in Planning Code Section 321(b)(3)(A)-(G). The findings contained in the Office Allocation Motion are incorporated into this Agreement. Because the office development contemplated by the Project has been found to promote the public welfare, convenience and necessity, the determination required under Section 321(b), where applicable, will be deemed to have been made for the entire Project (i.e., up to 2,061,380 GSF of office development undertaken consistent with the Project).

(a) In the Office Allocation Motion, the Planning Commission also granted up to 1,384,578 GSF of Prop M office allocation for Phase 1(a).

(b) Additional Prop M allocations for Phase 1(b) and Phase 1(c) are necessary for completion of the Project and to support the viability of the Associated Public Benefits for each respective Phase. An application for the Phase 1(b) and 1(c) Prop M allocations is on file with the Planning Department under Case No. 2017-000663OFA. If Developer is not then in default under this Agreement, the Planning Commission shall consider the Phase 1(b) office allocation at its first regularly scheduled hearing on or after October 17, 2021, unless otherwise requested by Developer. Developer shall notify the Planning Director not less than 60 days in advance of the hearing date to ensure that the matter is added to the calendar, and Developer has the right to make changes to its existing application at any time before such

notification date. Provided the design of the Project remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to additional office allocation of no less than 351,895 gsf under Sections 320-325 over office development proposed elsewhere in the City, subject to the existing priorities previously given to (a) the Mission Bay South Project Area; (b) the Transbay Transit Tower proposed for development on Lot 001 of Assessor's Block No. 3720; and (c) the Treasure Island development project. Notwithstanding the above, no office development project can be approved that would cause the then applicable annual limitation contained in Planning Code Section 321 to be exceeded, and the Planning Commission shall consider the design of the Project to confirm that it remains consistent with the Planning Commission's findings under Section 321(b)(3)(A)-(G) in the Office Allocation Motion. The requirements for Planning Commission approval described above will apply to the Project except to the extent such application would be prohibited by applicable law.

(c) Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which either the Stay Option or the Permanent Off-Site Option is exercised by the City to obtain a site permit for office development for the applicable phase of the Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

6.9 Fees and Exactions.

6.9.1 Generally. The Project and the Temporary Relocation Site at 2000 Marin shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 6.7, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or the Temporary Relocation Site at 2000 Marin, or impose new conditions or requirements for the right to develop the Project or the

Temporary Relocation Site at 2000 Marin (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 6.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

6.9.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project (or the Project Variant) or components thereof except for (i) those Impact Fees and Exactions specifically set forth on Exhibit P, and (ii) the SFPUC Capacity Charges, as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the Parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined; provided (i) in determining the amount of the Impact Fees and Exactions during the Initial Term only (as extended by Litigation Extension, if any), the rates will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid, and (ii) the initial Jobs Housing Linkage Fee shall not be calculated from the Effective Date, but instead shall be set based on legislation per Ordinance No. 251-19 (File No. 190548) to update the Jobs Housing Linkage Fee if adopted before the date of

payment (or, once adopted, the updated Fee amount will apply to payments made after the date of adoption), and thereafter shall adjust under Planning Code Section 409 as set forth in clause (i) above. During the Extension Term (if any), Developer shall be subject to any increase or decrease in the fee amount payable and any changes to the methodology of calculation (e.g., use of a different index to calculate annual increases), but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date. No Impact Fees or Exactions shall apply to the use of the Temporary Relocation Site at 2000 Marin for pre-existing uses or for new spaces constructed for flower market tenants.

(a) Jobs-Housing Linkage Fee and Affordable Housing Site Dedication. , Developer may satisfy all or a portion of its obligation under Planning Code Section 413 by utilizing the Transfer Parcel as a land dedication alternative (the "**JHL Fee Credit**") in accordance with Planning Code Sections 249.78(e)(2) and 413.7.

(b) Central SoMa Legacy Business and PDR Support Fund. In the event the Permanent Off-Site Option is exercised pursuant to Article 3, Developer shall deposit Twenty Million Dollars ($20,000,000) into a special fund or other account designated by the City (the "Central SoMa Legacy Business and PDR Support Fund") prior to issuance of the first construction document for the Project. Central SoMa Legacy Business and PDR Support Fund shall be used by the City to provide annual business grants to the Master Tenant under the Permanent Off-Site Master Lease each year beginning in the fourth year of the lease term, up to the earlier to occur of (i) thirty-four (34) years after commencement of the Permanent Off-Site Master Lease,

or (ii) exhaustion of funds in the Central SoMa Legacy Business and PDR Support Fund. The amount of such annual grant shall be determined by the City's Controller in consultation with the OEWD Director of Development, and shall be based upon the amount which, in the Controller's best judgment, will assure a continuous revenue stream during the lease term and will also provide necessary support to the Master Tenant. Notwithstanding the foregoing, if the City has not waived Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000) in Impact Fees and Exactions prior to issuance of the first construction document for the Project, then Developer shall not have any obligation to deposit funds into the Flower Market Legacy Business Fund. At the end 34 years, any unexpended funds shall be retained by the City to be used for job training, job retention, and other economic development purposes or shall be deposited into the fund from which it was diverted or the relevant successor fund.

(c) Eastern Neighborhoods Infrastructure Fee and Gateway Marker. Notwithstanding the provisions of Planning Code Section 423, Developer shall fund the design and complete the construction of an arch, monument, pillar or other physical marker, in a public location approved by the Planning Director, identifying the San Francisco Filipino Cultural Heritage District ("**Gateway Marker**"). The construction and permitting of the Gateway Marker shall be subject to the Planning Director's approval as to design and location, at his or her sole discretion following any required environmental review. Upon approval of the design, if any, the City shall enter into an in-kind agreement, using the City's standard form, to provide credit against Developer's Eastern Neighborhoods Infrastructure Impact Fees under Planning Code Section 423 in an amount equal to Developer's third party design and construction costs

but not to exceed $300,000. In the event the Gateway Marker is not fully approved and permitted by the City three years after the Effective Date, the City may instead allocate $300,000 of the Developer's Eastern Neighborhoods Infrastructure Impact Fees paid, or to be paid, to the Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District, administered by the Mayor's Office of Housing and Community Development under Administrative Code Section 10.100-52.

6.9.3 Processing Fees. Developer shall pay all Processing Fees in effect, on a City-wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

6.10 Changes in Federal or State Laws.

6.10.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement

and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

6.10.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 6.8.4, as applicable.

6.10.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

6.10.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 6.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 6.8 would materially and adversely affect or limit the Community Benefits (a "**Law Adverse to the City**"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 6.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Associated Community Benefits for each Building completed as set forth in Section 5.1.

6.11 No Action to Impede Approvals. Except and only as required under Section 6.8 the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 6.6.1.

6.12 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9; (v) the Effective Date of the Agreement; and (vi) the names of the Mortgagee that are subject to receiving notices under Section 11.3. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request. The City acknowledges that third parties with a property interest in the Project Site, such as mortgagees, acting in good faith, may rely upon such a certificate.

6.13 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified

by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 6. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Planning Code and the Central SOMA Plan.

6.14 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

7. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building commenced by Developer as set forth in Section 5.1. The development of the Project is subject

to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when each Phase and all of the Associated Community Benefits tied to that Phase have also been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit N for the applicable property.

8.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals, and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals, and any Later Approvals, are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department (in consultation with OEWD) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. Each City Agency responsible for reviewing any Later Approvals shall designate a single employee responsible for working with Developer and the Planning Department: (i) to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) to interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

8.2.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

8.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project is commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal. Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project (and therefore, there is more than one party that assumes obligations of "Developer" under this Agreement), then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project and only as to such portion, and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

8.2.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

8.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals.

8.4 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement and the Approvals in

accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

9.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 9.2.

9.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation (not including any proprietary or confidential information, to the extent any exists), Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof,

by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

9.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

9.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this

Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

9.2.4 Default. The rights and powers of the City under this Section 9.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of a Default.

10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

10.1 Enforcement. The only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

10.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 10.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 10.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days

following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 10.3.

10.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations, provided City shall have the right to withhold Later Approvals for all or any part of the Project Site if Developer fails to fulfill the Flower Market Obligations as and when required under this Agreement. Subject to the foregoing, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site. For purposes of this Section 10, a Party shall include all of

its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any termination or other remedy against that Party may include the same remedy against all such Affiliates.

10.4 Remedies.

10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 10.4.3, 10.4.4, and 10.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

10.4.2 Termination. Subject to the limitation set forth in Section 10.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 10.3 and 13.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

10.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 10.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement.

Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 10.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

10.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this

Agreement during any period in which Developer is in Default or Developer has failed to pay amounts due to the City under this Agreement; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City (subject to the Flower Market Obligation provisions described below). The City shall have the right to withhold a final certificate of occupancy within a Phase until all of the Associated Community Benefits tied to that Phase, together with the Flower Market Obligations, have been completed or Developer has provided the City with adequate security for completion of such Community Benefit (*e.g.,* a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney). For a Phase to be deemed completed, Developer shall have also completed all of the public open spaces and improvements for that Phase as set forth in Exhibit H or in a Later Approval; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance. Notwithstanding anything to the contrary above, the City shall have the right to withhold all certificates of occupancy and other Later Approvals Project-wide (against all Developers) if the Flower Market Obligations have not been satisfied when required. If the Payment Option has not been exercised, the Parties intend that the Post-Development Subtenants will be moved back to the Project Site first, and agree that City can withhold certificates of occupancy and Later Approvals for space at the Project

Site until all of the Post-Development Subtenants (not including those who elect to move elsewhere) have moved back to the Project Site in accordance with the Flower Market Obligations.

10.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air

freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

11. FINANCING; RIGHTS OF MORTGAGEES

11.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site.

11.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 11.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other

action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 5.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

11.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any

notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

11.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 11.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, provided that such period is tolled for any period during which the Mortgagee is prohibited from proceeding with foreclosure proceedings, e.g. due to a bankruptcy filing, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

11.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 5.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

11.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

11.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

12. AMENDMENT; TERMINATION; EXTENSION OF TERM

12.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided that following a Transfer, the City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 8.2.2, 8.4.2, and 12.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

12.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to Commence Construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following

delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

12.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Phase that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Phase that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 12.3 shall survive the termination of this Agreement.

12.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and no change to the Project that is permitted under the Central SOMA Plan shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties

shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project (or the Project Variant) as described in the Exhibits in keeping with its customary practices and the Central SOMA Plan, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

12.5 Extension Due to Legal Action or Referendum; Excusable Delay.

12.5.1 Litigation and Referendum Extension. If any litigation is filed challenging the Central SOMA Plan, the Central SOMA Plan FEIR, this Agreement, or an Approval having the direct or indirect effect of delaying this Agreement, or any Approval (including but not limited to any CEQA determinations), Relocation Site Approval, or Permanent Off-Site Approval that is issued prior to the Relocation Date, including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, this Agreement, Approval, Relocation Site Approval, or Permanent Off-Site Approval that is issued prior to the Relocation Date is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals that are issued prior to the Relocation Date shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals,

Relocation Site Approvals, and Permanent Off-Site Approvals issued prior to the Relocation Date, the date of the initial grant of such Approval, Relocation Site Approval, or Permanent Off-Site Approval issued prior to the Relocation Date) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

12.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's

obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

14.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be

the sole responsibility of the applicable Transferee (*i.e.*, the person or entity that is the Developer for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

14.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review within thirty (30) days after receipt, with such review being limited to confirming the Assignment and Assumption Agreement satisfies the requirements of this Agreement. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 13.1 shall not require the transfer of land or any other real property interests to the CMA.

14.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 13.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and

Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 9 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

14.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.

14.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

14.6 Rights of Developer. The provisions in this Section 13 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

15. DEVELOPER REPRESENTATIONS AND WARRANTIES

16.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this

Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

16.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

16.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

16.4 Notification of Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a

contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

16.5 Other Documents. To the current, actual knowledge of _____ and _____, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

16.6 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

17. MISCELLANEOUS PROVISIONS

17.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

17.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

17.3 Binding Covenants; Run With the Land. Pursuant to Section 65864 et seq. of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 13, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their

respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 13, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Sections 1468-1470.

17.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

17.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

17.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

17.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

17.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

17.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

17.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

17.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other or additional person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, Flower Mart Project

To Developer:

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

with a copy to:

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

Attn: Daniel Frattin or Tuija Catalano

17.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

17.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

17.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

17.15 Tropical Hardwood and Virgin Redwood. The City 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.

17.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

17.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, or its successors and assigns, in the event of any Default by City, or for any amount, which may become due to Developer, or its successors and assigns, under this Agreement.

17.18 Non-Liability of Developer Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of Developer or affiliate of Developer shall be personally liable to City, or its successors and assigns, in the event of any Default by Developer, or for any amount, which may become due to City, or its successors and assigns, under this Agreement.

17.19 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved on _____, 2019
Board of Supervisors Ordinance No. _____

Approved as to form:

DENNIS J. HERRERA, City Attorney

By:

Elizabeth A. Dietrich
Deputy City Attorney

APPROVED AND AGREED:

By: _____
Naomi Kelly, City Administrator

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited liability company

By: Kilroy Realty, L.P,
a Delaware limited partnership,
its Sole Member

By: Kilroy Realty Corporation,
a Maryland corporation,
its General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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 San Francisco)

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State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code

Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

FOR PROPERTY AT 5th and BRANNAN STREETS

Block 3778: Lots 1B, 2B, 4, 5, 47 and 48

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this ____ day of _____, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and KR FLOWER MART LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer owns and operates the approximately 295,144 square foot site along Brannan Street between 5th and 6th Streets, on Assessor's Block 3778, Lots 001B, 002B, 004, 005, 047 and 048, composed of the 141,992 square feet of flower market, approximately 4,900 square feet of existing retail uses, 45,549 square feet of vacant PDR space, and surface parking lots, as more particularly described on Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed use development that will include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing approximately: 2,032,165 square feet of office space; 89,459 square feet of retail space; 115,000 rentable square feet of vendor space (including accessory retail space) for a new wholesale

flower market; 30 loading spaces; and 769 parking spaces; all as more particularly described in Exhibit B.1 (the ~~"~~**"Project"**~~)~~") and shown in Exhibit C.1. The exact numbers listed above may change, in keeping with Planning Department standard practices consistent with the Planning Code.

C. In order to satisfy the tenants' request to have ~~a Payment~~an Permanent Off-Site Option (per Article 3), the Developer is also seeking entitlements for a revised project that replaces the on-site new wholesale flower market with approximately 113,036 square feet of other uses at the Project Site, consisting of a development with approximately: 2,061,380 square feet of office space; 90,976 square feet of retail space; 22,690 square feet of childcare use, including outdoor activity area; 9 loading spaces; and 632 vehicle parking spaces, all as more particularly described in Exhibit B.2 and shown in Exhibit C.2 (the ~~"~~**"Project Variant"**~~).~~"). All references in this Agreement to the "**Project**" shall mean (1) before selection under Article 3, both the Project and the Project Variant, and (2) following selection under Article 3, either the Project or the Project Variant, whichever is selected.

D. As part of the Project, Developer will relocate the existing flower market tenants to an interim facility constructed by Developer at the Temporary Relocation Site before Commencing Construction of the Project. Upon completion of the Project, Developer shall pay to move the flower market tenants back to the Project Site under the Project or to the Permanent Off-Site Facility under the Project Variant, as applicable. Alternatively, in the event the Permanent Off-Site Option is exercised, Developer may skip the Temporary Relocation Site and move the flower market vendors straight to the Permanent Off-Site Facility if the Permanent Off-Site Facility has been completed ~~at the Permanent Site~~ by the time Developer initially moves the flower market vendors from the Project Site. These commitments ~~were also made~~ by Developer

, together with certain rent schedule commitments for a period of at least 34.5 years, are also made in a tri-party agreement ~~between~~among Developer, Tenant Association, and ~~San Francisco Flower Mart LLC~~SFFM, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**~~"), as further described in Exhibit D.~~").

E. The Project is anticipated to generate an annual average of approximately 8,050 construction jobs during construction and, on completion, an approximately $29.9 million annual increase in general fund revenues to the City and approximately $9.3 million annual increase in non-general fund revenues to the City.

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "~~"~~**Development Agreement Statute**~~"),~~"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ~~("~~("**Chapter 56**~~")~~") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56. The Parties acknowledge that this Agreement is entered into in consideration of their respective burdens and benefits, including the representations and warranties, in this Agreement. The Parties also acknowledge that this Agreement is entered into to encourage and maintain effective land use planning.

G. As a result of the development of the Project in accordance with this Agreement, the City ~~as~~has determined that additional benefits to the public will accrue that could not be

obtained through application of existing City ordinances, regulations, and policies. These additional benefits are essential elements for this Agreement and include development of a new permanent home for the flower market, with subsidized rents, the dedication of a housing parcel ~~with no fee credit~~, onsite childcare, workforce commitments and certain public improvements as described herein.

H. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; ~~"~~"**CEQA**~~"),~~"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), ~~"~~"**CEQA Guidelines**~~"),~~"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project. Pursuant to Government Code Section 65867.5, this Agreement is a legislative act that is approved in an ordinance by the Board of Supervisors.

I. The Project Site is located in the recently adopted Central SOMA Plan area, which was approved by the Board of Supervisors on November 27, 2018 and December 4, 2018, pursuant to Ordinance Nos. 282-18, 296-18 and 280-18, Board of Supervisors File Nos. 180490, 180184, and 180185, respectively, which among other actions rezoned the Project Site for the CMUO (Central SOMA Mixed-Use Office) and MUR (Mixed Use Residential) zoning districts, and the 270-CS and 160-CS height and bulk districts.

J. The City analyzed the environmental impacts of the development density associated with the Project in the Central SOMA Plan Final Environmental Impact Report (**"Central SOMA FEIR"**), certified by the Planning Commission in Motion No. 20182, on May 10, 2018. Potential development at 2000 Marin Street, as the Temporary Relocation Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report (**"Bayview FEIR"**), which was certified by ~~[INSERT]~~the San Francisco Redevelopment Agency on March 2, 2006. On July 3, 2019, the Environmental Review Officer (**"ERO"**) issued a Community Plan Exemption ~~("~~("**CPE**~~")~~") and Addendum for the Project and the Temporary Relocation Site at 2000 Marin Street, including the mitigation monitoring and reporting program (**"MMRP"**). The CPE were prepared in accordance with CEQA and issued by the Planning Department in Case Nos. 2015-004256ENV. Copies of the Certificate of Determination are on file with the Board of Supervisors in File Nos. ~~[XX]~~190682 and 190681, and are incorporated herein by reference.

K. On _____, July 18, 2019, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission granted Approvals for the Project and adopted the MMRP, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the ~~"~~"**General Plan Consistency Findings**~~").~~"). The information in the Central SOMA FEIR, Bayview FEIR, and CPE were considered by the City in connection with approval of this Agreement.

L. On _____, 2019, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2019, the Board adopted Ordinance Nos. [_____] approving this Agreement (File No. 190682) and authorizing the Planning Director to execute this Agreement on behalf of the City (the ~~"~~"**Enacting Ordinance**~~")~~."). The Enacting Ordinance took effect on _____, ~~2019~~2020.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

~~2.~~1.1 **"Addendum"** has the meaning set forth in Recital J.

~~3.~~1.2 ~~"~~"**Administrative Code**~~"~~" means the San Francisco Administrative Code.

~~4.~~1.3 ~~"~~"**Affiliate**~~"~~" **or** ~~"~~"**Affiliates**~~"~~" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, ~~"~~"**control**~~"~~" means the ownership of more than fifty percent (50%) of the equity interest in such

entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

~~5.~~1.4 ~~"~~"**Agreement**~~"~~" means this Development Agreement, including the Recitals and Exhibits.

1.5 ~~"~~"**Alternative Permanent Site**" means a Viable site, in lieu of the Project Site, for the location of the Permanent Off-Site Facility, pursuant to Section 3 to this Agreement, in the event the Permanent Off-Site Option is exercised.

1.6 "**Alternative Option Period**" has the meaning set forth in Section 3.5.

~~1.5~~1.7 "**Annual Review Date**~~"~~" has the meaning set forth in Section 9.1.

~~1.6~~1.8 ~~"~~"**Applicable Laws**~~"~~" has the meaning set forth in Section 6.2 (where not capitalized, ~~"~~"applicable Law~~"~~" has its plain meaning and refers to Laws as otherwise defined herein).

~~1.7~~1.9 ~~"~~"**Approvals**~~"~~" means the City approvals and entitlements listed on Exhibit K.

~~1.8~~1.10~~"~~"**Assignment and Assumption Agreement**~~"~~" has the meaning set forth in Section 13.2.

1.11 "**As Is Relocation Option**" has the meaning set forth in Section 3.8.1(b).

~~1.9~~1.12"**Associated Community Benefits**" is defined in Section 45.1.

~~1.10~~1.13 **"Bayview FEIR"** shall have the meaning set forth in Recital J.

~~1.11~~1.14 ~~"~~"**Board of Supervisors**~~"~~" or ~~"~~"**Board**~~"~~" means the Board of Supervisors of the City and County of San Francisco.

~~1.12~~1.15 ~~"~~"**Building**~~"~~" means the Market Hall Building, the Blocks Building, or the Gateway Building (or collectively, the ~~"~~"**Buildings**~~"),~~"), as generally described in Exhibit B.

~~1.13~~1.16 **"Central SOMA FEIR"** shall have the meaning set forth in Recital J.

~~1.14~~1.17 ~~"~~"**Central SOMA Plan**~~"~~" shall have the meaning set forth in Recital ~~H~~.

~~1.15~~1.18 ~~"~~"**CEQA**~~"~~" has the meaning set forth in Recital H.

~~1.16~~1.19 **"CEQA Findings"** means the CEQA findings made by the Planning Commission and the Board of Supervisors in approving this Agreement.

~~1.17~~1.20 ~~"~~"**CEQA Guidelines**~~"~~" has the meaning set forth in Recital H.

~~1.18~~1.21 **"CFD"** means a community facilities district formed over all of the Project Site that is established under the CFD Act in accordance with the Central SOMA Plan.

~~1.19~~1.22 **"CFD Act"** means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Act, as amended from time to time.

~~1.20~~1.23 ~~"~~"**Chapter 56**~~"~~" has the meaning set forth in Recital F.

~~1.21~~1.24 ~~"~~"**City**~~"~~" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

~~1.22~~1.25 ~~"~~"**City Agency**~~"~~" or ~~"~~"**City Agencies**~~"~~" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this

Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFFD, SFMTA, SFPUC, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction or discretion of a City department that has not approved or consented to this Agreement in connection with the issuance or denial of a Later Approval., Relocation Site Approval, or Permanent Off-Site Approval. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

~~1.23~~1.26 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

~~1.24~~1.27 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including without limitation reasonable attorneys' fees and costs and third party costs relating to the Project, the Temporary Relocation Facility, and the Permanent Off-Site Facility, but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 10.6 when Developer is the prevailing party.

~~1.25~~1.28 "**City Parties**" has the meaning set forth in Section 5.6.

~~1.26~~1.29 ~~"~~**City Report**~~"~~ has the meaning set forth in Section 9.2.2.

~~1.27~~1.30 ~~"~~**City-Wide**~~"~~ means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

~~1.28~~1.31 ~~"~~**CMA**~~"~~ is defined in Section 13.1.

~~1.29~~1.32 ~~"~~**Commence Construction**~~"~~ means the commencement of physical construction of the applicable Building foundation on the Project Site.

~~1.30~~1.33 "**Community Benefits**" has the meaning set forth in Section 5.1.

~~1.31~~1.34 ~~"~~**Community Benefits Program**~~"~~ has the meaning set forth in Section 5.1.

~~1.32~~1.35 "**CPE**" has the meaning set forth in Recital J.

1.36 "**Declaration of Restrictions**" has the meaning set forth in Section 3.11.

~~1.33~~1.37 ~~"~~**Default**~~"~~ has the meaning set forth in Section 10.3.

~~1.34~~1.38 "**Design Guidelines**" means the Key Development Site Guidelines adopted as part of the Central SOMA Plan.

~~1.35~~1.39 ~~"~~**Developer**~~"~~ has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

~~1.36~~1.40 ~~"~~**Development Agreement Statute**~~"~~ has the meaning set forth in Recital F, as in effect as of the Effective Date.

~~1.37~~1.41 ~~"~~**DPW**~~"~~ means the San Francisco Department of Public Works.

~~1.38~~1.42 ~~"~~**Effective Date**~~"~~ has the meaning set forth in Section 2.1.

~~1.39~~1.43 ~~"~~"**Enacting Ordinance**~~"~~" has the meaning set forth in Recital M.

~~1.40~~1.44 ~~"~~"**Excusable Delay**~~"~~" has the meaning set forth in Section 12.5.2.

~~1.41~~1.45 ~~"~~"**Exercise Notice**~~"~~" has the meaning set forth in Section 3.~~3~~4.

1.46 ~~"~~"**Existing Flower Market**" means the improvements existing on the Project Site as of Effective Date, excluding the Zappettini Parcel.

~~1.42~~1.47 "**Existing Standards**~~"~~" has the meaning set forth in Section 6.2.

1.48 ~~"~~"**Existing Subtenant**" means each of those existing flower mart tenants who has a sublease for space at the Existing Flower Market as of the Relocation Date. Only Existing Subtenants in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent Off-Site Facility under the Permanent Off-Site Option.

~~1.43~~1.49 "**Existing Uses**~~"~~" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date.

~~1.44~~1.50 ~~"~~"**Extended Alternative Option Period**~~"~~" has the meaning set forth in Section 3.4.

~~1.45~~1.51 ~~"~~"**Federal or State Law Exception**~~"~~" has the meaning set forth in Section 6.~~8~~10.1.

~~46.1 "**Finally Granted**" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the CPE shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the CPE, as applicable, shall have been upheld by a final decision in each such appeal without~~

~~adverse effect on the applicable Approval, this Agreement or the CPE and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the CPE and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.~~

~~1.47~~1.52 "**Flower Market Obligations**" means Developer's obligations described in Article 3 and in ~~subsections~~subsection 5.1.1.

~~1.48~~1.53 ~~"~~"**Foreclosed Property**~~"~~" is defined in Section 11.5.

~~1.49~~1.54 ~~"~~"**General Plan Consistency Findings**~~"~~" has the meaning set forth in Recital K.

~~1.50~~1.55 ~~"~~"**Gross Floor Area**~~"~~" has the meaning set forth in Planning Code Section 102 as of the Effective Date.

~~1.51~~1.56 ~~"~~"**Impact Fees and Exactions**~~"~~" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, including offsets for any applicable fee credits, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to the Transportation Sustainability Fee (per Planning Code Section 411A), the Jobs-Housing Linkage Fee (per Planning Code Section 413), Child Care Fee (per Planning Code Section 414), Art Fee (per Planning Code Section 429), School Impact Fee (California Education Code Section 17620), Eastern Neighborhoods Infrastructure Impact Fee (per Planning Code Section 423), or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or

special assessments or school district fees (including CFD special taxes due under the Central SOMA Plan), SFPUC Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws. A sample calculation of the applicable Impact Fees and Exactions is included in Exhibit P.

~~1.52~~1.57 "**Interim Lease**" means a lease entered into by Developer, as tenant, and the owner of the Temporary Relocation Site, for the temporary flower market, consistent with the requirements of the Tri-Party Agreement and this Agreement.

1.58 ~~"~~"**JHL Fee Credit**" has the meaning set forth in Section 6.9.1(a).

~~1.53~~1.59 "**Later Approval**~~"~~" means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, design review approvals, improvement agreements, use permits, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, street space permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

~~1.54~~1.60 ~~"~~"**Law(s)**~~"~~)" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San

Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" shall refer to any or all Laws as the context may require.

~~1.55~~1.61 "**Law Adverse to City**" is defined in Section 6.8~~10~~.4.

~~1.56~~1.62 "**Law Adverse to Developer**" is defined in Section 6.8~~10~~.4.

~~1.57~~1.63 "**Litigation Extension**" has the meaning set forth in Section 12.5.1.

~~57.1 "**Loan Commitment**" means the loan commitment made by a bona fide, third party institutional lender to Alternate Landlord to provide the Debt for the Permanent Facility in accordance with the terms of this Agreement. The Loan Commitment will be subject to the approval of the City and Developer for consistency with this Agreement.~~

~~1.59~~1.64 "**Losses**" has the meaning set forth in Section 5.6.

1.65 "**Master Tenant**" means the direct tenant or subtenant of Developer at any of the Existing Flower Market, the Temporary Relocation Facility, the Permanent Off-Site Facility, or the New Wholesale Flower Market, as applicable.

~~1.60~~1.66 "**Material Change**" means any modification that would materially alter the rights, benefits or obligations of the City or Developer under this Agreement that is not consistent with the Central SOMA Plan or that (i) extends the Term, (ii) changes the permitted uses of the Project Site, (iii) decreases the Community Benefits, (iv) increases the maximum height, density, or bulk by more than ten percent (10%) the size of the Project or changes the parking ratios (other than as permitted under the Central SOMA Plan), or (vi) reduces the applicable rate for the Impact Fees and Exactions.

~~1.61~~1.67 ~~"~~"**Mitigation Measures**~~"~~" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.

~~1.62~~1.68 ~~"~~"**MMRP**~~"~~" means that certain mitigation monitoring and reporting program attached hereto as Exhibit L.

~~1.63~~1.69 ~~"~~"**Mortgage**~~"~~" means a mortgage, deed of trust or other lien on all or part of the Project Site~~, including mezzanine financing,~~ or the Alternative Permanent Site to secure an obligation made by the ~~applicable~~ property owner or holder of a leasehold interest.

~~1.64~~1.70 ~~"~~"**Mortgagee**~~"~~" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

~~1.65~~1.71 ~~"~~"**Municipal Code**~~"~~" means the San Francisco Municipal Code.

~~1.66~~1.72 ~~"~~"**New City Laws**~~"~~" has the meaning set forth in Section 6.7.

~~65.1 "New Market Payment" has the meaning set forth in Section 3.6.4.~~

~~1.68~~1.73 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market ~~to be construction~~(including 10,000 square feet of accessory retail) to be constructed on the Project Site as part of the Project, as more particularly described in the project description in Exhibit B.1.

~~1.69~~1.74 ~~"~~"**Non-City Agency**~~"~~" means Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement.

~~1.70~~1.75 ~~"~~"**OEWD**~~"~~" means the San Francisco Office of Economic and Workforce Development.

~~1.71~~1.76 ~~"~~"**Official Records**~~"~~" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

~~69.1 "**Option Period**" has the meaning set forth in Section 3.3.~~

~~1.73~~1.77 ~~"~~"**Party**~~"~~" and ~~"~~"**Parties**~~"~~" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee.

~~70.1 "**Payment Notice**" has the meaning set forth in Section 3.4.~~

~~70.2 "**Payment Option**" has the meaning set forth in Section 3.6.~~

1.78 ~~"**Permanent**~~ **"Permanent Off-Site Approvals"** means the Permanent Off-Site Building Approvals and the Permanent Off-Site Entitlement Approvals.

1.79 **"Permanent Off-Site Building Approvals"** means the first site permit or first building permit issued by the City or any City Agency, other than the Approvals, for the Alternative Permanent Site and/or the Permanent Off-Site Facility~~"~~.

1.80 **"Permanent Off-Site Entitlement Approvals"** means any land use approval or entitlement issued by the City or any City Agency, other than the Approvals, that are necessary for the use of the Permanent Off-Site Facility and the Alternative Permanent Site as a wholesale flower market with ancillary retail uses, including without limitation Planning Commission and/or Planning Department entitlements, Planning Code amendments, and completion of CEQA review.

~~1.76~~1.81 **"Permanent Off-Site Facility"** means a permanent flower market facility to be constructed at the Alternative Permanent Site, in lieu of the New Wholesale Flower Market at the Project Site, pursuant to Section 3 and Exhibit F-1 to this Agreement, in the event the ~~Payment~~Permanent Off-Site Option is exercised~~.~~, as more particularly set forth in Section 3.7.

1.82 "**Permanent ~~Interest Free Loan~~Off-Site Master Lease**" means a lease for the Alternative Permanent Site entered into by Developer, as the landlord, and Master Tenant, as the tenant, for a term of no less than 34.5 years or 35 years, as approved by the City, after the relocation of the Vendors.

~~1.77~~1.83 "**Permanent Off-Site Notice**" has the meaning set forth in ~~Exhibit F~~ Section 3.3.

~~72.1 "Permanent KRC Contribution" has~~**Off-Site Option**" means an option whereby in lieu of a New Wholesale Flower Market at the ~~meaning set forth in Exhibit F 3.~~

~~1.79~~1.84 "Project Site, a Permanent ~~Lease" means~~ Off-Site Facility is constructed at the ~~lease or agreement between Alternate Landlord and the Tenant Association, and/or its members, for the construction and use of the~~Alternative Permanent ~~Facility, for not less than 15 years, that meets the requirements of this Agreement. The~~ Site and leased pursuant to the Permanent ~~Lease will be subject to the approval of the City and Developer for consistency with this Agreement. The Parties will calculate the New Market Payment based on the terms of the Permanent Lease, as either set forth in the actual document or in a signed letter of intent~~Off-Site Master Lease.

~~73.1 "Permanent Site" has the meaning set forth in Section 3.6.1.~~

~~1.81~~1.85 "**Phase**" means either Phase 1(a), Phase 1(b) or Phase 1(c), as applicable.

~~1.82~~1.86 "**Phase 1(a)**" means the issuance of a certificate of occupancy and/or final completion for the Blocks Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H. If ~~Payment~~the Stay Option is ~~not~~ exercised, Phase 1(a) will not be deemed complete until all Post-Development Subtenants who

have entered into a Post-Development Sublease have been relocated back to the Project as part of ~~the~~ Developer's relocation program in accordance with the Tri-Party Agreement.

~~1.83~~1.87 **"Phase 1(b)"** means the issuance of a certificate of occupancy and/or final completion for the Market Hall Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

~~1.84~~1.88 **"Phase 1(c)"** means the issuance of a certificate of occupancy and/or final completion for the Gateway Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

~~1.85~~1.89 ~~"~~**"Planning Code"** means the San Francisco Planning Code.

~~1.86~~1.90 ~~"~~**"Planning Commission"** means the Planning Commission of the City and County of San Francisco.

~~1.87~~1.91 ~~"~~**"Planning Department"** means the Planning Department of the City and County of San Francisco.

~~1.88~~1.92 ~~"~~**"Planning Director"** means the Director of Planning of the City and County of San Francisco.

~~1.89~~1.93 **"Post-Development Subtenant"** means each of those Existing Subtenants and Pre-Development Subtenants who pursuant to the terms of the Tri-Party Agreement enter into a Post-Development Sublease with the ~~Developer~~owner or master lessor thereof at the New Wholesale Flower Market.

~~1.90~~1.94 ~~"~~**"Post-Development Sublease"** means a lease agreement at the New Wholesale Flower Market between ~~the~~ Developer or the master lessor of the New Wholesale Flower Market and each Post-Development Subtenant.

~~83.1 "Pre-Development Costs" means the Tenant Association's and its~~

~~affiliates' documented third party costs of negotiating exhibits to this Agreement, the amendment to the Tri-Party Agreement, and the long-term lease for the Permanent Site, if applicable, and all investigation, design, feasibility and other predevelopment costs relating to the Stay Option and the Payment Option, including the completion of design and construction documents for the Permanent Facility, permitting and entitlement costs, and all fees and costs of completing the Permanent Facility other than construction costs, all as approved by the City as set forth in this Agreement.~~

~~1.92~~1.95 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who ~~pursuant to~~, in accordance with the terms~~, and after the execution,~~ of the Tri-Party Agreement (and the Pre-Development Lease defined therein), entered into a ~~lease agreement~~Pre-Development Sublease for space at the ~~Project~~ Existing Flower Market or the Temporary Relocation Site, as applicable. Only Pre-Development Subtenants that remain in Good Standing, as defined in the Tri-Party Agreement, will have the right to move to (i) the New Wholesale Flower Market under the Stay Option, or (ii) the Permanent Off-Site ~~prior to the construction of the Project and the New Wholesale Flower Market.~~ Facility under the Permanent Off-Site Option.

~~1.93~~1.96 ~~"~~"**Processing Fees**~~"~~" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

~~1.94~~1.97 ~~"~~"**Project**~~"~~" means either the Project or the Project Variant, once determined in accordance with Article 3, together with Developer's rights and obligations under this Agreement.

~~1.95~~1.98 ~~"~~**"Project Open Space"** means the privately owned, publicly accessible open space described in Exhibit I.

~~1.96~~1.99 ~~"~~**"Project Site"** has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

~~1.97~~1.100 **"Project Variant"** means the mixed use development project described in Recital C and Exhibit B.2 and the Approvals.

~~1.98~~1.101 ~~"~~**"Public Health and Safety Exception"** has the meaning set forth in Section 6.~~11~~10.1.

~~1.99~~1.102 ~~"~~**"Public Improvements"** means the following improvements: (i) new sidewalks and sidewalk amenities at a width and design to be determined by DPW and Planning Department staff in accordance with the Better Streets Plan, Central SOMA Plan, and Planning Code, (ii) curbs on the portions of Brannan, Fifth, Sixth, and Morris Streets adjoining the Project Site~~, repaving of _____~~ as outlined in the drawings attached to the Approvals from the Planning Commission; (iii) off-site public open space improvements under the elevated portion of Interstate-80 between.

1.103 ~~"~~**"Relocation Date"** means the date on which all of the Vendors who wish to be relocated to the Temporary Relocation Facility, or to the Permanent Off-Site Facility, as applicable, are relocated by Developer in accordance with the Tri-Party Agreement.

~~91.1 "~~**Relocation Matters**~~" has the meaning set forth in Section 3.6.2.~~

~~1.101~~1.104 ~~"Second Payment"~~" has the meaning set forth in Section 3.~~6.~~3.

1.105 "**Relocation Option During Litigation Pendency**" has the meaning set forth in Section 3.8.2(d).

1.106 "**Relocation Site Approval**" means land use approvals and Planning Code exceptions applicable to the Temporary Relocation Site at 2000 Marin set forth on Exhibit Q, and any land use approvals, entitlement, or permit, from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Relocation Site located at 2000 Marin by the Existing Subtenants and Pre-Development Subtenants during the construction of the Project.

~~1.102~~1.107 "**SFFD**" means the San Francisco Fire Department.

1.108 ~~"~~"**SFFM**" means San Francisco Flower Mart LLC, a California limited liability company.

~~1.103~~1.109 "**SFMTA**~~"~~" means the San Francisco Municipal Transportation Agency.

~~1.104~~1.110 ~~"~~"**SFPUC**~~"~~" means the San Francisco Public Utilities Commission.

~~1.105~~1.111 ~~"~~"**SFPUC Capacity Charges**~~"~~" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

~~1.106~~1.112 ~~"~~"**Stay Notice**~~"~~" has the meaning set forth in Section 3.43.

~~1.107~~1.113 "**Stay Option**" ~~has~~means Developer construction of a New Wholesale Flower Market at the ~~meaning set forth in Section 3.5~~Project Site.

~~1.108~~1.114 ~~"~~ "**Subdivision Code**~~"~~" means the San Francisco Subdivision Code.

~~1.109~~1.115 ~~"~~"**Subdivision Map Act**~~"~~" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

~~1.110~~1.116 "**Temporary Relocation Facility**" means the temporary flower market facility to be built by Developer (if at all) at no cost to the City or to the flower market Vendors, and meeting the requirements of Exhibit E.

~~1.111~~1.117 **"Temporary Relocation Site"** means ~~the~~a Viable site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Relocation Facility. ~~The~~ In the event the Stay Option is exercised, the Temporary Relocation Site will be at 2000 Marin ~~Street, which is the pre-approved~~so long as no other mutually agreeable Viable temporary site ~~per the Tri-Party Agreement, unless an alternative location is Viable~~selected by the Parties and ~~approved by~~ Developer~~, the City and the Tenant Association. If~~ has entered into an Interim Lease for 2000 Marin ~~is not available because the SFPUC does not yet own the property by October 30, 2019, the City and Developer may agree upon an alternative site as the Temporary Site provided that (a) the site will include not less than 115,000 square feet of occupiable space [or not less than 100,000 square feet if the City determines that the site it can properly accommodate all Existing Subtenants and Pre-Development Subtenants that wish to relocate there], (b) the site will accommodate the Existing Subtenants' and Pre-Development Subtenants' continued operation of their businesses in substantially the same manner as the Existing Subtenants are operated as of the date of the Tri-Party Agreement, including an equivalent amount of private and shared or common refrigeration as is available in the existing flower mart, and (c) the site allows all of the Existing Subtenants and Pre-Development Subtenants to be relocated together and at one time.~~.

~~102.1 "**Temporary Site Approval**" means any land use approval, entitlement, or permit from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Site by the existing flower market~~

~~tenants during the construction of the Project. The list of Temporary Site Approvals, and the Planning Code exceptions applicable to the Temporary Site, at 2000 Marin are included in Exhibit Q.~~

~~1.113~~1.118 "**Tenant Association**" means the San Francisco Flower Market Tenants' Association.

1.119 ~~"~~"**Tenant Option Period**" has the meaning set forth in Section 3.3.

~~1.114~~1.120 "**Term**~~"~~" has the meaning set forth in Section 2.2.

~~1.115~~1.121 ~~"~~"**Third-Party Challenge**~~"~~" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals, Later Approvals, the CPE or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

~~1.116~~1.122 ~~"~~"**Transfer**~~,"~~ ~~"~~," "**Transferee**~~"~~" and ~~"~~"**Transferred Property**~~"~~" have the meanings set forth in Section 13.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

~~1.117~~1.123 ~~"~~"**Transfer Agreement**~~"~~" means that certain Agreement for Transfer of Real Estate attached as Exhibit S for the transfer of property outside the Project Site from Developer to the City to be used by the City for the development of affordable housing or to fund the development of affordable housing, as may be determined by City.

~~1.118~~1.124 "**Transfer Parcel**" means vacant, unimproved land within the

Central or Western SoMa Plan Area, not less than 14,000 square feet, identified by Developer and acceptable to MOHCD, for conveyance to the City in accordance with the Transfer Agreement;

~~1.119~~1.125 "**Transportation Program**" means the transportation program set forth in Exhibit J.

~~1.120~~1.126 "**Tri-Party Agreement**" means that certain Tri-Party Agreement ~~between~~among Developer, the Tenant Association, and the ~~San Francisco Flower Mart LLC~~SFFM, dated as of June 26, 2015, and amended and restated on _____, 2019.

~~1.10.1 "Upfront PD Payments" has the meaning set forth in Section 1 to Exhibit F-3.~~

~~1.122~~1.127 "**Vendors**" means the Existing Subtenants and Pre-Development Subtenants that wish to be relocated to the Temporary Relocation Facility or the Permanent Off-Site Facility, as the context requires, in accordance with the Tri-Party Agreement and either the Pre-Development Master Lease or Permanent Off-Site Master Lease, as applicable.

1.128 ~~"~~"**Vested Elements**~~"~~" has the meaning set forth in Section 6.1.

~~1.123~~1.129 "**Viable**" has the meaning set forth in Section ~~6.1.~~3.7 with respect to Permanent Off-Site Facility. For a Temporary Relocation Site, "Viable" means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary retail uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can accommodate the design and specifications set forth in Exhibit E for the Temporary Relocation Facility; (iv) the site is owned by Developer or under an Interim Lease with Developer; and (v) the site has an existing building that substantially meets, or could be modified so as to

substantially meet, the requirements in Exhibit E for the Temporary Relocation Facility, or on which such a building could be constructed by Developer.

~~1.12.1 "**Viable**" has the meaning set forth in Section 3.6.1.~~

~~1.125~~1.130 ~~"~~"**Workforce Agreement**~~"~~" means the Workforce Agreement attached hereto as Exhibit O.

1.131 "**Zappettini Parcel**" means Assessor's Lots 047 and 048 on Block 3778.

~~1.14.~~2. EFFECTIVE DATE; TERM

115.2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative ~~("**Effective Date**").~~.

116.2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter (the "**Initial Term**"), unless extended or earlier terminated as provided herein, provided however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to terminate this Agreement with respect to the first Phase ~~1(a)~~ upon completion of the first Phase ~~1(a),~~ including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the first Phase ~~1(a)~~ during the Initial Term and thereafter continues to diligently prosecute the first Phase ~~1(a)~~ to completion, and is not in Default (or has cured a Default pursuant to Section 10.3) under this Agreement between the date of exercise and the date the Initial Term expires, then Developer shall have the right to extend the term of this Agreement for an additional five (5) years (the "**Extended Term**") by delivering to the City, at any time during the last year of the Initial Term, a notice of extension. The 5-year extension shall be automatic upon Developer's delivery of the

extension notice unless Developer is in Default (not including a Default that was cured pursuant to Section 10.3) at the time Developer sends the notice or before the start of the Extended Term, in which case the City may reject the notice by written notice of rejection to Developer. The term of this Agreement (the "**Term**") shall mean the Initial Term plus, if applicable, the Extended Term. The performance period or the term for any Approval or Later Approval shall be for the longer of the Term or the performance period or term otherwise applicable to such Approval or Later Approval. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

~~11~~7.2.3Phasing~~.~~. Developer ~~shall complete~~anticipates completing Phase 1(a) first, before ~~Phase 1~~Phase 1(b) or Phase 1(c~~),~~); however, Developer may alter the anticipated phasing, including completion of multiple Phases simultaneously, so long as ~~to complete~~ the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) ~~before the~~described in Exhibit H are completed prior to Developer's receipt of ~~certificates~~the first certificate of occupancy for ~~the office portions of the Blocks Building or for~~ any ~~of the other Buildings. Subject to the requirement to complete Phase 1(a) first, Developer may complete the Phases in any order and may develop Phases simultaneously.~~ Phase or portion thereof.

~~11~~8.—TEMPORARY RELOCATION SITE AND PERMANENT OFF-SITE FACILITY

3.____

~~11~~9.3.1Temporary Relocation Site~~.~~. Before Developer may begin demolition on the portion of the Project Site ~~that is actively occupied by Existing Subtenants and Pre-Development Subtenants~~other than the Zappettini Parcel, Developer shall (a) obtain the exclusive

right to occupy (based on an Interim Lease or ownership interest) improved or unimproved real property for use of the Temporary Relocation Site, consistent with the requirements of the Tri-Party Agreement and this Agreement, (b) complete the Temporary Relocation Facility in accordance with the specifications set forth in Exhibit E (upon completion, the "**Temporary Facility**"),, and (c) move the Vendors that occupy the Existing SubtenantsFlower Market as of the Relocation Date and Pre-Development Subtenants that wish to be relocated to the Temporary Relocation Facility (collectively, the "**Vendors**") at no cost to the Vendors in accordance with the Tri-Party Agreement. Developer shall ensure that the Existing Subtenants and Pre-Development SubtenantsVendors have the continuing right to occupy the Temporary Relocation Facility under the Interim Lease, on the same terms of their then-existing leasessubleases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than five (5six (6) years, including any extension options, from the date that the last of the Vendors is moved to the Temporary FacilityInterim Lease commencement date; provided the City may agree to a shorter term if the City determines that less time is needed for the completion of construction of the New Wholesale Flower Market or the Permanent Off-Site Facility, whichever is the case. Notwithstanding the foregoing, Developer may skip the Temporary Relocation Facility and move the Existing Subtenants and Pre-Development SubtenantsVendors straight to the Alternative Permanent Site if the City selects the Payment Option and the Permanent Off-Site Option is selected when the Permanent Off-Site Facility at the Alternative Permanent Site has been completed by the initial move date. is complete.

119.1 PaymentPermanent Off-Site Option or Stay Option.. As set forth in this Article 3, the City shall elect either the PaymentPermanent Off-Site Option or the Stay Option. Following the CityCity's election, Developer shall either (i) complete the New Wholesale Flower

Market at the Project Site under the Stay Option, or (ii) ~~make~~complete the ~~New Market Payment to~~Permanent Off-Site Facility at the ~~City~~Alternative Permanent Site under the ~~Payment~~Permanent Off-Site Option.

~~119.2 Option Period; Exercise Notice. In accordance with this Article 3, the City shall exercise the Stay Option or the Payment Option on or before the date that is sixty (60) days following the Effective Date, without extension for a Litigation Extension or Excusable Delay but subject to extension as set forth in Section 3.4 (the "**Option Period**"). The City shall exercise the Stay Option or the Payment Option by delivery of written notice to Developer in the form attached as Exhibit G-1 (the "**Exercise Notice**"). Developer has no right or obligation to consider whether any of the City's requirements for exercise of the Stay Option or the Payment Option have been satisfied, and Developer shall rely solely upon receipt of the Exercise Notice in the form attached in order to proceed with the Stay Option or the Payment Option, as selected by the City. Developer has no right to condition or reject the City's exercise of the Payment Option or to determine the location of the Permanent Site provided, for purposes of determining the New Market Payment amount, the Permanent Site must substantially meet the requirements in Exhibit F.~~

~~119.3 Potential City Extension of the Option Period; Final City Election. During the Option Period, the Tenant Association, acting through counsel for the Tenant Association, will send to the City~~Tenant Option Period. Tenant Association, acting through its counsel, will send to the City, with a copy to Developer, a notice requesting that the City proceed with the Stay Option in the form attached as Exhibit G-2 (the "**Stay Notice**") or the ~~Payment Option in the form attached as Exhibit G-3 (the "**Payment Notice**"). If the City does not receive the Payment Notice or the Stay Notice before the end of the Option Period, the City has the right, in~~

~~its sole discretion, to extend the Option Period by up to an additional sixty (60) days (the "**Extended Option Period**") by providing to Developer a written notice of extension; provided, the City shall in fact extend the Option Period for the Extended Option Period if the City receives a written request to do so by the Tenant Association, acting through counsel for the Tenant Association. During the Extended Option Period, if any, OEWD and Planning staff agree to meet and confer with the Tenant Association upon request in an effort to identify or narrow the potential sites that may become the Permanent Site and any related issues. If, notwithstanding any such extension, the City still does not receive the Payment Notice or the Stay Notice before the end of the Extended Option Period, then the City shall elect either the Payment Option or the Stay Option based upon all of the information available as of such date. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within twenty (20) days following the end of the Extended Option Period. If the City fails to send the Exercise Notice by the end of this twenty (20) day period, then the City will be deemed to have selected the Payment Option.~~

~~119.4 Stay Option. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Option Period, the City will send the Exercise Notice to Developer electing the Stay Option, and the Payment Option shall terminate and be no further force or effect.~~ Permanent Off-Site Option in the form attached as Exhibit G-3 (the "**Permanent Off-Site Notice**") on or before thirty (30) days after the Effective Date ("**Tenant Option Period**"). The Stay Notice or the Permanent Off-Site Notice shall be sent by~~Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.~~

~~119.5 Payment Option.~~

~~119.5.1Permanent Site. The Payment Option is designed to provide for the construction of the Permanent Facility at an alternative site proposed by the Tenant Association and approved by the City (the "**Permanent Site**"). While the City expects that the Tenant Association will agree upon a Permanent Site that is Viable, the City retains the right to select the Permanent Site if the Tenant Association does not select a site in San Francisco that is Viable or the Tenant Association cannot otherwise agree on a site. Nothing in this Agreement shall prevent the City from changing the Permanent Site upon discovery that the previously approved Permanent Site is no longer Viable, and nothing shall require the City to add funds to the New Market Payment in order to complete the Permanent Facility at the Permanent Site.~~

~~119.5.2Viability. For purposes of viability of the Permanent Site under this section, a proposed site will be deemed "**Viable**" if the following conditions are met: (i) the site is in San Francisco and zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (ii) that site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can accommodate the design and specifications set forth in Exhibit F-1 for the Permanent Facility; (iv) the site is owned by an entity willing to enter into negotiations for a long term lease, consistent with the requirements of this Agreement and the Tri Party Agreement, including the length of term, the rents payable by the vendors with nondisturbance protections for the vendors, and the construction of the Permanent Facility with the New Market Payment; and (v) the site has an existing building that substantially~~

meets, or could be modified so as to substantially meet, the requirements in Exhibit F-1 for the Permanent Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources. For purposes of viability of the Temporary Site under Section 3.1, a proposed site will be deemed **"Viable"** if the following conditions are met: (i) the site is zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can accommodate the design and specifications set forth in Exhibit E for the Temporary Facility; (iv) the site is owned by an entity willing to enter into negotiations for the Interim Lease, consistent with the requirements of this Agreement and the Tri-Party Agreement, including the timely availability of the site, the length of term, the rents payable by the vendors with nondisturbance protections for the vendors; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit E for the Temporary Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources.

119.5.3Exercise Conditions. The City shall exercise the Payment Option if the following requirements are satisfied before expiration of the Option Period, or the Extended Option Period if applicable. The City may waive any of the following requirements except for the requirement set forth in subsection (c):

~~(a)~~3.3 ~~The City receives the Payment Notice from~~ the Tenant Association's counsel, confirming that the Tenant Association has affirmatively voted and approved, at a duly noticed and held election in accordance with the Tenant Association's bylaws~~, (1)~~ to choose either the ~~City's exercise of the Payment~~Stay Option~~, (2) one~~ or ~~more proposed locations~~the Permanent Off-Site Option, and shall include, substantially in ~~San Francisco, acceptable to~~ the form and content in the "Tenant Association~~, for the Permanent Site (and identifying those sites),~~ ~~(~~ Release and Indemnity" included in Exhibits G-2 and G-3, (1) a release of any claims by the Tenant Association against the City regarding this Agreement, the ~~Payment Option, the~~ Tri-Party Agreement and any other related documents, the Temporary ~~Site and the~~Relocation Site, New Wholesale Flower Market, the Alternative Permanent Site, and the relocation of ~~vendors~~Vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (42) a release of any claims by the Tenant Association against Developer for the Relocation Matters, but excluding all of Developer's prospective obligations under this Agreement and any other agreement between the Tenant Association and Developer; and (~~5~~3) an indemnity by the Tenant Association, in favor of the City and Developer, for any claims made by any flower market vendor challenging any of the Relocation Matters~~; and~~.

~~(b)~~ Stay Option Exercise. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Tenant Option Period, the City will send the Exercise Notice in the form attached as Exhibit G-1 (the "**Exercise Notice**") to Developer within five business (5) days after receipt of the Stay Notice, electing the Stay Option if, on before the date that is sixty (60) days after the expiration of the Tenant Option Period ("**Alternative Option Period**"), which may be extended at Developer's request by an additional thirty (30) days or longer ("**Extended Alternative**

Option Period"), Developer delivers to the City, with a copy to the Tenant Association, an executed Interim Lease for the Temporary Relocation Facility or proof of Temporary Relocation Site ownership. If the Stay Option is exercised the Permanent Off-Site Option shall terminate and be no further force or effect. Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.~~The Tenant Association sends to the City with the Payment Notice, a brief summary of the advantages of the alternative sites proposed by the Tenant Association for the Permanent Site, which may include to the extent available (1) a preliminary budget for the improvements, as well as a statement of anticipated funding sources (on top of the New Market Payment made by Developer, if any), and (2) any additional information that the Tenant Association believes is relevant to the determination of Viability of the proposed locations; and~~

~~(c) The Planning Director and the OEWD Director of Development determine, acting reasonably, that at least one of the locations proposed by the Tenant Association is Viable for the Permanent Facility, or if not, that an alternative location for the Permanent Site selected by the City is Viable.~~

3.4

3.5 Permanent Off-Site Option Exercise. If the Tenant Association elects the Permanent Off-Site Option and sends the Permanent Off-Site Notice to the City before the end of the Tenant Option Period, the City shall exercise the Permanent Off-Site Option if, on or before the expiration of the Alternative Option Period or the Extended Alternative Option Period, as applicable, Developer delivers to the City, with a copy to the Tenant Association, preliminary conceptual plans for a Viable location in San Francisco for the Permanent Off-Site Facility, and

the City agrees that the proposed Alternative Permanent Site is Viable. If the Developer does not deliver the above-mentioned conceptual plans in a timely manner or if the City does not agree that the Alternative Permanent Site is Viable, the Extended Alternative Option Period is extended until such time when the plans are delivered to the City or the City agrees that the Alternative Permanent Site is Viable, as applicable. The City shall exercise the Permanent Off-Site Option by delivery of the Exercise Notice to Developer in the form attached as Exhibit G-1 within five (5) business days after receipt of the above-mentioned information from Developer.

3.6 Tenant Failure to Exercise; Final City Election. If the City does not receive the Permanent Off-Site Notice or the Stay Notice before the end of the Tenant Option Period, the City has the right, in its sole discretion, to elect either the Permanent Off-Site Option or the Stay Option based upon all of the information available to it. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within fifteen (15) days after the Alternative Option Period or the Extended Alternative Option Period, as applicable. If the City fails to send the Exercise Notice by the end of such fifteen (15) day period, then Developer shall have the right to choose between the Stay Option and the Permanent Off-Site Option.

3.7 Permanent Off-Site Facility Construction. The Permanent Off-Site Option is designed to provide for the renovation of existing building(s) and/or construction of new building(s) in order to create a permanent wholesale flower market at an Alternative Permanent Site by Developer (the "**Permanent Off-Site Facility**"). The Permanent Off-Site Facility constructed by Developer shall be on a Viable Alternative Permanent Site. "**Viable**" for purposes of an Alternative Permanent Site means that the following conditions are met: (i) the site is in San Francisco; (ii) the site is not a publicly owned site; (iii) the site is mutually agreeable to Developer

and Tenant Association; (iv) the site is either owned by Developer or leased by Developer for a term of at least 34.5 years or 35 years, as approved by the City; and (v) any lienholder with an interest in the site superior to the Permanent Off-Site Master Lease has provided reasonable non-disturbance protections to the Master Tenant and to any subtenants under the Permanent Off-Site Master Lease.

3.8 Completion of Design and Construction Documents. Following exercise of the ~~Payment~~Permanent Off-Site Option, Developer~~, the Tenant Association and City~~ shall ~~work together with the Alternate Landlord to~~ complete design and construction documents for the Permanent ~~Facility,~~ Off-Site Facility consistent with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease, submit applications for the Permanent Off-Site Approvals to the City, and shall construct the Permanent Off-Site Facility in accordance with the specifications in Exhibit F-1 and the Permanent Off-Site Master Lease.

3.8.1 If the Permanent Off-Site Option is exercised and any of the following circumstances occur: (i) the Permanent Off-Site Entitlement Approvals are not initially granted within the approval deadlines for environmental determinations specified by Section 1(a) of Executive Directive No. 17-02 issued by Mayor Edwin M. Lee starting from the date of receipt of Developer's complete response to the first Notice of Planning Department Requirements issued by the Planning Department, subject to a 60-day cure period for the City (such period to commence upon written notice from Developer to the City and SFFM) to initially grant such Permanent Off-Site Entitlement Approvals and an extension period of up to one hundred twenty (120) days in the event that an administrative appeal is filed challenging the Permanent Off-Site Entitlement Approvals, and provided that in no case shall the approval time period be less than nine (9) months;

(ii) the Permanent Off-Site Building Approvals are not finally granted within nine (9) months starting from later to occur of the date the Permanent Off-Site Entitlement Approvals are initially granted or the date of acceptance by the City of a complete application for Developer's first site permit or first building permit for the Alternative Permanent Site, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the City to finally grant such Permanent Off-Site Building Approvals and subject to an extension for the period of appeal in the event that the Permanent Off-Site Entitlement Approvals are appealed, up to 120 days; (iii) an administrative appeal or judicial challenge is filed by Tenant Association, SFFM, or any vendor at the Existing Flower Market challenging the Permanent Off-Site Approvals, subject to a 60-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for such parties to withdraw the administrative appeal(s) or expunge judicial challenge(s); or (iv) a judicial challenge is filed by any party challenging the Alternative Permanent Site Approvals for the Permanent Off-Site Facility that results in the issuance of an injunction prohibiting the issuance of building permits, commencement of construction, and/or occupancy of the Permanent Off-Site Facility pursuant to the Permanent Off-Site Approvals, subject to a 120-day cure period (such period to commence upon written notice from Developer to the City and SFFM) for the injunction to be lifted, then all of the following shall apply:

(a) Developer may terminate the Pre-Development Lease by delivering six (6) months prior written notice to SFFM, with a copy to the City, and notwithstanding Section 3.1 requirements regarding commencement of demolition on the Project Site to the contrary, upon the Pre-Development Lease termination Developer

may begin demolition of the Project Site and construction of the Project; and

(b) If Developer terminates the Pre-Development Lease, then upon delivery of Developer's termination notice pursuant to Section 3.8.1(a), Developer shall provide SFFM a right to relocate to the Permanent Off-Site Facility in an "as is" condition ("**As Is Relocation Option**"), which (unless SFFM elects to require Developer to construct the Permanent Off-Site Facility as described in Section 3.8.1(c) below) means the condition existing at the Alternative Permanent Site as of SFFM's exercise of the As Is Relocation Option; and

~~3.6.4~~(c) Within 60 days of the receipt of Developer's termination notice, SFFM shall either: (i) accept the As Is Relocation Option, pursuant to the terms of the Permanent Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for the acceptance of the Permanent Off-Site Facility in an "as is" condition per Section 3.8.1(b), and Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000) for any tenant improvements SFFM elects to complete to the Permanent Off-Site Facility; or (ii) reject, or fail to timely exercise, the As Is Relocation Option, in which case upon the effective date for the termination of the Pre-Development Lease, Developer shall provide SFFM a payment of Fifteen Million Dollars ($15,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process ~~in Exhibit F-2.~~ any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent

Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco. In the cases described in Section 3.8.1 (i), (ii), or (iv) above and if SFFM accepts the As Is Relocation Option pursuant to this Section 3.8.1(c), then in addition to its choice of remedies described in the foregoing sentence and despite termination of the Pre-Development Lease, in lieu of the initial payment of $15,000,000, SFFM may choose to require Developer to diligently pursue the Permanent Off-Site Approvals and complete construction of the Permanent Off-Site Facility consistent with Exhibit F-1 and the Permanent Off-Site Master Lease for a period of twenty-four (24) months after SFFM's election, and if completion (i) occurs by the end of such period then upon completion Developer shall relocate all Vendors who wish to be relocated to the Permanent Off-Site Facility, or (ii) does not occur by the end of such period then Developer shall pay $15,000,000 to SFFM upon expiration of such period.

~~119.5.5 Pre-Development Payments. As set forth in Exhibit F-3, the Developer shall pay to the City Two Hundred and Fifty Thousand Dollars ($250,000) and Seven Hundred and Fifty Thousand Dollars ($750,000) in Upfront PD Payments as part of Pre-Development Costs, within fifteen (15) and thirty (30) days following the Effective Date, respectively, so that the City can pay the same to the Tenant Association for the Tenant Association's and its affiliates' documented third party costs of negotiating exhibits to this Agreement, the amendment to the Tri Party Agreement,~~

~~investigation, design, feasibility and other predevelopment costs relative to the Stay Option and the Payment Option, including costs incurred before the Effective Date. The Tenant Association shall send invoices of Pre-Development Costs incurred to the City, for approval and processing through the OEWD Development Director. Upon exhaustion of the Upfront PD Payments, the Tenant Association shall invoice Pre-Development Costs monthly or quarterly, or as otherwise agreed by the City, for review and approval by the City and Developer, which approval will not be unreasonably withheld or delayed. The City, Developer and the Tenant Association will meet regularly to review budgets, invoices and contracts for all Pre-Development Costs, and to cooperate on the completion of all design and construction documentation for the Permanent Facility, as set forth in Exhibit F-2. If there is any disagreement between Developer and the Tenant Association on the appropriateness or amount of any Pre-Development Cost or any design element for inclusion in the Permanent Facility, the matter will be decided by the OEWD Development Director. For Pre-Development Costs, Developer may pay amounts due and owing directly to the City or to the specified contractor or entity (with standard documentation) that performed the work. Developer and the Tenant Association shall each maintain books and records for all Pre-Development Costs and payments made by Developer and the Tenant Association, respectively, which will be subject to City review and audit upon request.~~

~~19.5.6New Market Payment. Developer shall pay to the City the development cost payment determined in accordance with the Permanent Facility specifications in Exhibit F-1 and using the process in Exhibit F-2 (the "**New Market Payment**"). The New Market Payment is designed to cover certain applicable costs~~

~~associated with the feasibility determination and leasing of the Permanent Site and the design, permitting and construction of the Permanent Facility, based on the actual designs and construction documents completed to date, and for any items not yet completed, based on the assumptions set forth in Exhibit F including the rent schedule. For sake of clarity, the New Market Payment includes all Pre-Development Costs (based on actuals to date of determination), and thus all amounts previously paid by Developer for Pre-Development Costs, but excluding feasibility analysis costs, will be credited against the New Market Payment. The process for determining the New Market Payment will begin within thirty (30) days following the earlier of (1) City's notice to Developer that all Pre-Development Cost work has been completed, (2) the second anniversary of the date that the last of the Existing Subtenants and Pre-Development Subtenants has been moved to the Temporary Facility, or (3) the third anniversary of the Effective Date, subject to potential extension at the City's discretion in the event the above date is more than six (6) months away from the anticipated receipt of the first temporary certificate of occupancy for the Project. [*New Market Payment timing by Developer.*]~~

~~119.5.7 Use of New Market Payment. Upon receipt, the City shall hold the New Market Payment for costs relating to the Permanent Facility. In no event shall New Market Payment funds be used to pay any vendor to retire, to go out of business, or to move its business to an alternative location. The funds shall be held by the City's Controller, and the City shall establish disbursement procedures and safeguards to ensure that all New Market Payment funds are properly used and disbursed as contemplated by this Agreement. The New Market Payment funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City's~~

~~Controller shall maintain records as part of the City's accounting system to account for all the expenditures and the remaining balance.~~

~~119.5.9 Payment Authorization. By approving this Agreement, the Board of Supervisors understands that the City will make payments, using Developer's funds, to the Tenant Association or the Alternate Landlord or their contractors and agents, and the Board of Supervisors authorizes the Controller, OEWD and other City staff to take such actions as needed to make such payments consistent with this Agreement, including, if necessary, the assignment of a City vendor number for payment notwithstanding the lack of a City contract. The City waives or overrides any ordinances or processes that would otherwise prevent the City from making the payments contemplated by this Agreement. Without limiting the foregoing, the parties understand and agree that the New Market Payment are not City funds and the construction of the Permanent Facility is not a public work under Administrative Chapter 6.~~

~~119.5.10 Contracting Safeguards. The City anticipates that the Tenant Association's or its landlord's construction contracts and professional services will be negotiated to ensure competitive market rates, and that appropriate safeguards will be established to ensure that there is no overpayment, self-dealing or conflicts of interest. Contracts with funding from the New Market Payment shall include First Source Hiring, prevailing wage, and other City workforce requirements.~~

~~119.5.11 Excess Funds. If New Market Payment funds remain unexpended upon completion of the New Flower Market or ten (10) years following the Effective Date, whichever is earlier, the City shall use the unexpended funds~~

to subsidize affordable PDR uses and for other community benefits, as determined by the Planning Director and the Director of OEWD.

119.6 Developer's Rights and Obligations During and After Payment Option Exercise. Developer and the Tenant Association shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is disbursed by the City in good faith in accordance with this Agreement. Developer shall have no right or obligation regarding the exercise of the Payment Option or the Stay Option. Subject to compliance with Exhibit F-2 processes, Developer also shall have no right to object to the Permanent Site selection, the design or size of the Permanent Facility (except, for purposes of determining the New Market Payment, the facility must be in substantial conformance with the specifications set forth in Exhibit F), or the contractors or agents selected by the Tenant Association or the City. The City shall, working with the Tenant Association, use good faith efforts to assist in the design and construction of the Permanent Facility generally consistent with the description outlined in Exhibit F. Upon the City's exercise of the Payment Option and provided Developer pays the Pre-Development Costs and the New Market Payment in a timely manner as required by this Agreement, (1) Developer will have no obligation to build the New Flower Market at the Project Site or otherwise ensure completion of the Permanent Facility, (2) Developer shall have the right, but not the obligation, to proceed with the Project Variant in accordance with the requirements of this Agreement, and (3) Developer shall be deemed to have satisfied the Community Benefits obligations under Section 5.1.1(a)-(b). The Tenant Association's or its landlord's failure to start or complete the Permanent Facility for any reason shall not be a breach by Developer under this Agreement, and Developer's sole obligation relative to the Permanent Facility, following payment of the New Market Payment, shall be to pay moving costs to the Temporary Site and to

~~then to the Permanent Site, provided that such moving costs are incurred no later than the end of the Interim Lease or six years from the Effective Date, whichever is later.~~

3.8.2 In the event that a filing and pendency of a judicial challenge on the Permanent Off-Site Approvals exists and was filed by a party other than Tenant Association, SFFM, or any vendor at the Existing Flower Market, and no injunction is issued preventing the issuance of the Permanent Off-Site Approvals, then during the pendency of such challenge Developer may not effect termination of the Pre-Development Lease prior to the conclusion of such challenge and may either wait for resolution of the challenge, or may proceed with the construction of the Permanent Off-Site Facility consistent with the Permanent Off-Site Approvals and Exhibit F-1 in which case all of the following shall apply:

(a) Unless prohibited by injunction, City Agencies shall not stop the processing or issuance of building permits or approvals due to such judicial challenge and, provided that Developer obtains any necessary Later Approvals, shall allow development of the Permanent Off-Site Facility to proceed consistent with the Permanent Off-Site Approvals; and

(b) Developer shall give SFFM a right to relocate to the Permanent Off-Site Facility after the Developer's completion of the Permanent Off-Site Facility in accordance with Exhibit F-1 and pursuant to the Permanent Off-Site Approvals ("**Relocation Option During Litigation Pendency**"); and

(c) Within 60 days of its receipt of the Developer's Relocation Option During Litigation Pendency notice, SFFM shall either: (i) accept the Relocation Option During Litigation Pendency, pursuant to the terms of the Permanent

Off-Site Master Lease, with the exception that the Permanent Off-Site Master Lease shall be amended to provide for SFFM acceptance of any limitations or restrictions (whether occupancy or improvement related) which may be imposed by the verdict in the judicial challenge (subject to SFFM's right to pursue any approvals or other authorizations to eliminate any compliance issues established by such a verdict), in which case Developer shall complete construction of the Permanent Off-Site Facility consistent with the specifications in Exhibit F-1, and upon the Relocation Date the Pre-Development Lease shall terminate; or (ii) reject or fail to timely exercise the Relocation Option During Litigation Pendency, in which case the Pre-Development Lease shall terminate no less than six (6) months after delivery of the Relocation Option During Litigation Pendency notice, Developer shall provide SFFM a payment of Ten Million Dollars ($10,000,000), and Developer may utilize, lease, sell or encumber the Permanent Off-Site Facility and the Alternative Permanent Site in any manner it desires, consistent with zoning and any required approvals, and the City shall process any permits or approvals for the Permanent Off-Site Facility and the Alternative Permanent Site in its normal course of permitting and shall not unreasonably withhold any approvals for the Permanent Off-Site Facility or the Alternative Permanent Site, provided that Developer shall dedicate new or existing space for production, distribution and/or repair ("**PDR**") use in an amount equal to the square footage of legal PDR use existing at the Alternative Permanent Site before the issuance of the Permanent Off-Site Approvals for a minimum of 34.5 years, at Developer's sole discretion, either at the Alternative Permanent Site, the Project Site, or any other site or sites in San Francisco.

3.8.3 In the event that the issuance of any element of the

Permanent Off-Site Approvals is delayed as a result of (i) Developer's failure to provide requested additional information or materials from City Agencies or to respond to City Agencies in a prompt and expeditious manner, or (ii) the filing or pendency of an administrative appeal or judicial challenge to any of the Permanent Off-Site Approvals by Developer or its Affiliate, then the corresponding period for the affected Permanent Off-Site Approval shall be extended by the length of such delay.

~~3.8~~3.9 City Decisions~~.~~. Except where otherwise noted, all discretionary decisions relating to City actions under this Article 3 shall be made jointly by the Planning Director and the OEWD Director of Development. The Planning Director and the OEWD Director of Development will consult other City officials as they deem appropriate.

~~3.9~~3.10No City Liability~~.~~. Following exercise of the ~~Payment~~Permanent Off-Site Option, OEWD and Planning staff shall use good faith efforts to assist ~~the Tenant Association~~Developer with the development of the Permanent Off-Site Facility at the ~~finally selected~~Alternative Permanent Site. Following exercise of the Stay Option, OEWD and Planning staff shall use good faith efforts to monitor and enforce Developer's obligations to build the New Wholesale Flower Market at the Project Site. But nothing in this Agreement shall create any City liability to Developer, to the Tenant Association, to SFFM, or to any flower market ~~Vendor~~vendor relating to the New Wholesale Flower Market, the Permanent Off-Site Facility, or to the Relocation Matters. All interested persons are given notice, and understand and agree, that completion of the New Wholesale Flower Market or the Permanent Off-Site Facility will likely involve many challenges, and that no particular outcome can be guaranteed. By entering into this Agreement, the City is not guarantying the successful completion of the replacement market or any other result. The City would not be willing to enter into this Agreement without this

provision. Without limiting Developer's indemnity obligations in this Agreement, if and to the extent that City is required to expend any funds or staff time defending this Agreement or any discretionary decisions made by the City related to this Article 3 or the Relocation Matters from a claim made by the Tenant Association or any flower market ~~Vendor, the City may reimburse itself from the Upfront PD Payments or the New Market Payment, if any (which shall, in turn, reduce the amounts available for construction of the Permanent Facility).~~vendor, such funds and the costs of such staff time shall be included in City Costs.

3.11 Tri-Party Agreement; Declaration of Restrictions. Developer shall comply with its key obligations under the Tri-Party Agreement, including compliance with the rent schedule provided in Exhibit D and other key obligations summarized in Exhibit D. If the Permanent Off-Site Option is exercised, then prior to the earlier to occur of (i) issuance of the first certificate of occupancy for any portion of the Project (provided that SFFM has not rejected or failed to timely exercise either the As Is Relocation Option or the Relocation Option during Litigation Pendency pursuant to Section 3.8.1 or Section 3.8.2, in which case no Declaration of Restrictions shall be recorded against the Alternative Permanent Site), or (ii) commencement of the term of the Permanent Off-Site Master Lease, Developer shall record a Declaration of Restrictions (the "**Declaration of Restrictions**") against the Alternative Permanent Site consistent with the form of document attached in Exhibit D-1 and revised as appropriate with such terms and conditions relating to this Agreement, the Permanent Off-Site Master Lease, and the Alternative Permanent Site, as the City may reasonably require. The term of the Declaration of Restrictions shall end upon termination of the Permanent Off-Site Master Lease and any Deemed Consent Subleases (as defined in the Permanent Off-Site Master Lease), and upon such termination the Declaration of Restrictions shall no longer affect the Alternative Permanent Site.

The City requires recordation of the Declaration of Restrictions to assure that Developer's commitments to the rent subsidies pursuant to the Permanent Off-Site Master Lease and its provision of the public benefit of a continued viable wholesale flower market in San Francisco are enforced. Developer's breach of the obligations described in Exhibit D or in the Declaration of Restrictions, following the notice and cure periods set forth in Section 10.3, shall be a material breach of this Agreement. Developer will provide the City with any information it requests relating to the Declaration of Restrictions, the Alternative Permanent Site, and the Permanent Off-Site Facility in a timely manner, including without limitation information customarily requested by the City's Assessor pursuant to California Revenue & Taxation Code, Sections 71, 441, and 470 and the right to audit revenues and expenditures relating to the Alternative Permanent Site and the Permanent Off-Site Facility. The provisions of this Section 3.11 shall survive the expiration of this Agreement.

~~122.~~4. GENERAL RIGHTS AND OBLIGATIONS.

123.4.1 Project and Project Variant's Compliance with Certain Design Requirements. Concurrently with the approval of this Agreement, certain Planning Code Text Amendments applicable to the Project were approved by the Board of Supervisors, as listed in Exhibit R.

124.4.2 Development of the Project. Developer shall have the vested right to develop the Project and the Temporary Relocation Facility in accordance with and subject to the provisions of this Agreement, the Approvals, Later Approvals, and ~~Temporary~~Relocation Site Approvals with respect to 2000 Marin, and the City shall consider and process all Later Approvals for development of the Project and the Temporary Relocation Facility at the Temporary Relocation Site, in accordance with and subject to the provisions of this Agreement.

The Parties acknowledge (i) that immediately before the approval of this Agreement, the City approved and granted the Approvals for the Project as listed in Exhibit K, and (ii) that Developer may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals, as needed.

125.4.3 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement.

126.4.4 Community Facility Districts. The City intends to form a CFD under the CFD Act to finance or seek reimbursement of certain costs as set forth in the SOMA Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the CFDs or other charges set forth in the Central SOMA Plan, or the issuance of additional bonds or other financing secured by CFD special taxes or the application of bond proceeds consistent with the SOMA Plan. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Central SOMA Plan fees or the CFD special taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in any sale agreement or lease for all or part of the ~~Property~~Project Site.

~~127.~~4.5 Transfer Parcel~~.~~. Before the ~~start~~issuance of the first construction ~~of~~document for the ~~Blocks Building~~Project, the City, acting through MOHCD, and Developer shall enter into the Transfer Agreement, substantially in the form attached as Exhibit S, for the Transfer Parcel proposed by Developer and approved by MOHCD. Developer shall convey the

Transfer Parcel to the City in accordance with the Transfer Agreement on or before issuance of the first certificate of occupancy for ~~the Blocks Building~~ any portion of the Project's first building. The City shall use the Transfer Parcel to develop affordable housing; provided if the City decides after acceptance that it cannot develop affordable housing on the Transfer Parcel, the City may sell the Transfer Parcel and use the net sales proceeds for affordable housing within the boundaries of Central SoMa, Eastern SoMa or Western SoMa Area Plans.

~~128.~~5. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

129.5.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 5 (the "~~"~~**Community Benefits**~~").~~"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is an essential element to this Agreement and is tied to a specific phase of the Project, as described in the Phasing Plan or elsewhere in this Agreement (with each Phase, an "**Associated Community Benefit**"). Time is of the essence with respect to the completion of the Community Benefits.

~~12.9.1.1~~5.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the ~~"~~"**Community Benefit Programs**~~");~~"):

(a) the construction and development of the New Wholesale Flower Market on the Project Site or alternatively, if the ~~Payment~~Permanent Off-Site Option is exercised, ~~payment of~~ the ~~New Market Payment for~~ construction and development of the ~~New Flower Market~~Permanent Off-Site Facility at the Alternative Permanent Site in accordance with Article 3;

(b) the rent subsidies ~~deseribed~~per the Tri-Party Agreement, in ~~Article 3~~accordance with the rent schedule included in Exhibit D and the Declaration of Restrictions attached as Exhibit D-1;

(c) the relocation of the Existing Tenants and Pre-Development Subtenants to the Temporary Relocation Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or ~~payment for the relocation~~ to the Alternative Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party Agreement, including the requirement that all Existing Tenants and Pre-Development Subtenants shall be moved together at one time (the collective obligations in subparagraphs (a) through (c) shall be referred to as the "**Flower Market Obligations**");

(d) the Workforce Program, as described in Exhibit O;

(e) the Project Open Space and Public Improvements, as described in Exhibit I;

(f) the Transportation Demand Management Program attached as Exhibit J;

(g) conveyance of the Transfer Parcel to the City, in accordance with the Transfer Agreement, at no cost to City;

(h) under the Project Variant, Developer shall construct a subsidized child care center in Phase 1(a), consisting of approximately 23,000 square feet at the ~~Gateway~~Blocks Building, for lease to a qualified non-profit child care operator for ten (10) years at a cost not exceeding landlord's actual costs for operating expenses; ~~and~~

(i) the payment of $5 million to Mercy Housing California, to pay for costs related to the Sunnydale Hub project, on or before the issuance of the first construction document for the Project ~~(or Project Variant).~~; and

~~(i)~~(j) the payment of $200,000 within sixty (60) days following the Effective Date, and each anniversary thereafter annually for a period of ten (10) years (i.e. a total of $2,000,000), to support street cleaning efforts in SoMa.

129.1.25.1.2 Conditions to Performance of Community Benefits. Developer's obligation to perform each Associated Community Benefit is expressly conditioned upon each and all of the following conditions precedent:

(a) All Approvals and Later Approvals for the applicable Phase to which the Associated Community Benefit is tied shall have been Finally Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and ~~Temporary~~Relocation Site Approvals with respect to 2000 Marin, if applicable) have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit with a Phase, the City may withhold a certificate of occupancy for the Building in that Phase until the required Associated

Community Benefit is completed or Developer has provided the City with adequate security for completion of such Associated Community Benefit (*e.g.*, a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney); and

(b) Developer shall have Commenced Construction of the Building in the applicable Phase to which the Associated Community Benefit applies.

130.5.2 No Additional CEQA Review Required; Reliance on CPE and Addendum for Later Approvals. The Parties acknowledge that the CPE and Addendum prepared for the Project and 2000 Marin as the Temporary Relocation Site, respectively, complies with CEQA. The Parties further acknowledge that (a) the CPE and Addendum contain a thorough environmental analysis of the Project, including the Temporary ~~Site,~~Relocation Site (with respect to 2000 Marin), and demonstrate that the Project's impacts were previously analyzed in the Central SOMA FEIR and the Addendum, as the case may be; (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings. Accordingly, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the CPE and Addendum, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with the Temporary Relocation Site or a change in the location of the Temporary Relocation Site, the Permanent Site, affordable housing dedication site, or any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

5.2.15.3.1 Compliance with CEQA Mitigation Measures.

Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all mitigation measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the CPE and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

131.5.3 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

132.5.4 City Cost Recovery.

~~132.1.1~~5.4.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 6.7.

~~132.1.2~~5.4.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

~~132.1.3~~5.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 5.5.4 from the City.

~~132.1.4~~5.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such

parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 5.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

~~132.1.5~~5.4.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

133.5.5 Prevailing Wages. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720 - 1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all persons performing labor in the construction of Public Improvements under this Agreement will

be: (1) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), and (2) provided the same hours, working conditions, and benefits as provided for similar work performed in San Francisco County in Administrative Code section 6.22(f). Developer further agrees to employ Apprentices on the Public Improvement work in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing the Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. City's Office of Labor Standards Enforcement ("**OLSE**") enforces labor laws, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

134.5.6 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the ~~"~~"**City Parties**~~")~~") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ~~("~~("**Losses**~~")~~") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or

this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

~~135.~~6. VESTING AND CITY OBLIGATIONS

136.6.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Accordingly, the City in granting the Approvals and vesting them through this Agreement is

limiting its future discretion with respect to Later Approvals and ~~Temporary~~Relocation Site Approvals to the extent they include elements that were approved as part earlier Approvals. The criteria for City review and approval of Later Approvals is set forth in Section 6.3. Consequently, the City shall not use its discretionary authority in considering and approving an application for Later Approvals or ~~Temporary~~Relocation Site Approvals with respect to 2000 Marin to change the policy decisions reflected by the Approvals or otherwise to prevent or to delay development of the Project or the Project Variant as set forth in the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access and parking (including parking ratios), and the Prop. M allocation made for the Project on the Effective Date (collectively, the ~~"~~"**Vested Elements**~~";~~"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals and ~~Temporary~~Relocation Site Approvals with respect to 2000 Marin, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval and ~~Temporary~~Relocation Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

137.6.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules

and regulations, as each of the foregoing is in effect on the Effective Date ~~("~~("**Existing Standards**~~"),~~"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 6.67, and (iii) this Agreement (collectively, ~~"~~"**Applicable Laws**~~").~~").

138.6.3 Criteria for Later Approvals. Developer shall be responsible for obtaining applicable Later Approvals before the start of construction that requires such approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval based upon an item or element that is consistent the Approvals, and shall consider all such applications in accordance with City's customary practice, normal discretion and Applicable Laws, subject to the requirements of this Agreement. The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Approvals and the Planning Code, and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" or the Temporary Relocation Site under this Agreement.

3.6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from ~~the~~ Developer of a completed application (with any required ~~-~~supporting documentation) for one of more Later Approvals, Relocation Site Approvals, or Permanent Off-Site Approvals, the City shall use reasonable efforts to promptly commence and complete all steps necessary to act on such applications in a timely way and in accordance with applicable Laws.

4.6.5 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Mechanical Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, and the Public Works Code and Subdivision Code and other uniform construction codes applicable on a City-Wide basis. This shall not be construed to prohibit exceptions, equivalencies, or other administrative relief available under such Codes.

5.6.6 Denial of a Later Approval ~~or Temporary~~, Relocation Site Approval, or Permanent Off-Site Approval. If the City denies any application for a Later Approval that implements a Building that is part of the Project or a ~~Temporary~~Relocation Site Approval or Permanent Off-Site Approval for the Temporary Relocation Site or Alternative Permanent Site, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with this Agreement, earlier Approvals, and Applicable Laws, and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, earlier Approvals and Applicable Laws, and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

~~6.~~6.7 New City Laws~~.~~. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date (~~"~~("**New City Laws**~~")~~") shall apply to the Project, the Project Site, and the Temporary

Relocation Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

~~6.1.1~~6.7.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project or the Temporary Relocation Site at 2000 Marin, or any part thereof, or otherwise require any reduction in the square footage, number, or size of the proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from those permitted under the Approvals;

(b) limit or reduce the height, bulk, or mass of the Project, or any part thereof, or otherwise require any reduction in the height, bulk, or mass of individual Buildings or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, or the amount or location of parking or loading from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the consideration of the Phase 1(b) Office Allocation as specified in Section 6.8(b), or demolition of existing buildings at the Project Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

(i) impose any regulation or other requirement that controls commercial rents or purchase prices charged within the Project or on the Project Site, except as set forth in this Agreement and the Tri-Party Agreement;

(j) materially limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 6.~~7~~9.2); or

(l) Reduce the amount of allowable parking or loading for the Project or the Temporary ~~Site.~~Relocation Site at 2000 Marin; or

(m) ~~The~~ Negatively alter the Phase 1(b) Office Allocation priority in Section 6.8(b).

~~6.1.2~~6.7.2 Developer may, at its sole discretion, elect to have a New City Law that conflicts with this Agreement be applied to the Project or the Project Site by giving the City written notice of its election to have a New City Law applied, in which case such New City Law shall be deemed to be an Existing Standard;

~~6.1.3~~6.7.3 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map

applications and development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge parcels within the Project Site as is required or may be desirable in order to developer a particular phase of the Project the Project or to lease, mortgage or sell all or some portion of it. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals or Later Approvals.

7.6.8 Proposition M Office Allocation. The Project includes up to 2,061,380 gross square feet ("**GSF**") of office development proposed to be constructed in three phases: (i) Phase 1(a) with up to 1,384,578 GSF of office, (ii) Phase 1(b) with up to 351,895 GSF of office; and (iii) Phase 1(c) with up to 324,907 GSF of office. Before the Effective Date, by Motion No. 20485 (the "**Office Allocation Motion**"), the Planning Commission adopted findings pursuant to Planning Code Section 321(b)(1) that up to 2,061,380 GSF of office development at the Project Site contemplated by this Agreement and the Central SOMA Plan and Design Guidelines promotes the public welfare, convenience and necessity, and in doing so it considered the criteria in Planning Code Section 321(b)(3)(A)-(G). The findings contained in the Office Allocation Motion are incorporated into this Agreement. Because the office development contemplated by the Project has been found to promote the public welfare, convenience and

necessity, the determination required under Section 321(b), where applicable, will be deemed to have been made for the entire Project (i.e., up to 2,061,380 GSF of office development undertaken consistent with the Project).

(a) In the Office Allocation Motion, the Planning Commission also granted up to 1,384,578 GSF of Prop M office allocation for Phase 1(a).

(b) Additional Prop M allocations for Phase 1(b) and Phase 1(c) are necessary for completion of the Project and to support the viability of the Associated Public Benefits for each respective Phase. An application for the Phase 1(b) and 1(c) Prop M allocations is on file with the Planning Department under Case No. 2017-000663OFA. If Developer is not then in default under this Agreement, the Planning Commission shall consider the Phase 1(b) office allocation at its first regularly scheduled hearing on or after October 17, 2021, unless otherwise requested by ~~the~~ Developer. Developer shall notify the Planning Director not less than 60 days in advance of the hearing date to ensure that the matter is added to the calendar, and Developer has the right to make changes to its existing application at any time before such notification date. Provided the design of the ~~Phase 1(b) office building~~Project remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to ~~the Phase 1(b)~~additional office ~~development~~allocation of no less than 351,895 gsf under Sections 320-325 over ~~all~~ office development proposed elsewhere in the City, subject to the existing priorities previously given to (a) the Mission Bay South Project Area; (b) the Transbay Transit Tower proposed for development on Lot 001 of Assessor's Block No. 3720; and (c) the Treasure Island development project. Notwithstanding the above, no office development project can be approved that would cause the then applicable annual limitation contained in Planning Code Section 321 to be exceeded, and the Planning Commission shall

consider the design of the ~~Phase 1(b) office building~~Project to confirm that it remains consistent with the Planning Commission's findings under Section 321(b)(3)(A)-(G) in the Office Allocation Motion. The requirements for Planning Commission approval described above will apply to ~~Phase 1(b)~~the Project except to the extent such application would be prohibited by applicable law.

(c) Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which ~~each Prop. M allocation is granted under this Agreement~~either the Stay Option or the Permanent Off-Site Option is exercised by the City to obtain a site permit for office development for the applicable phase of the Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

8.6.9 Fees and Exactions.

8.1.16.9.1 Generally. The Project and the Temporary Relocation Site at 2000 Marin shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 6.7, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or the Temporary Relocation Site at 2000 Marin, or impose new conditions or requirements for the right to develop the Project or the Temporary Relocation Site at 2000 Marin (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 6.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such

development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

8.1.26.9.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project (or the Project Variant) or components thereof except for (i) those Impact Fees and Exactions specifically set forth on Exhibit P, and (ii) the SFPUC Capacity Charges, as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the Parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined; provided, (i) in determining the amount of the Impact Fees and Exactions during the Initial Term only (as extended by Litigation Extension, if any), the rates will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid, and (ii) the initial Jobs Housing Linkage Fee shall not be calculated from the Effective Date, but instead shall be set based on legislation per Ordinance No. 251-19 (File No. 190548) to update the Jobs Housing Linkage Fee if adopted before the date of payment (or, once adopted, the updated Fee amount will apply to payments made after the date of adoption), and thereafter shall adjust under Planning Code Section 409 as set forth in clause (i) above. During the Extension Term (if any), Developer shall be subject to any increase or decrease in the fee amount payable and any changes to the methodology of calculation (e.g., use of a different index to calculate annual increases),

but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date. No Impact Fees or Exactions shall apply to the use of the Temporary Relocation Site at 2000 Marin for pre-existing uses or for new spaces constructed for flower market tenants.

(a) ———Jobs-Housing Linkage Fee and Affordable Housing Site Dedication. , Developer may satisfy all or a portion of its obligation under Planning Code Section 413 by utilizing the Transfer Parcel as a land dedication alternative (the "**JHL Fee Credit**") in accordance with Planning Code Sections 249.78(e)(2) and 413.7.

(b) Central SoMa Legacy Business and PDR Support Fund. In the event the Permanent Off-Site Option is exercised pursuant to Article 3, Developer shall deposit Twenty Million Dollars ($20,000,000) into a special fund or other account designated by the City (the "Central SoMa Legacy Business and PDR Support Fund") prior to issuance of the first construction document for the Project. Central SoMa Legacy Business and PDR Support Fund shall be used by the City to provide annual business grants to the Master Tenant under the Permanent Off-Site Master Lease each year beginning in the fourth year of the lease term, up to the earlier to occur of (i) thirty-four (34) years after commencement of the Permanent Off-Site Master Lease, or (ii) exhaustion of funds in the Central SoMa Legacy Business and PDR Support Fund. The amount of such annual grant shall be determined by the City's Controller in consultation with the OEWD Director of Development, and shall be based upon the amount which, in the Controller's best judgment, will assure a continuous revenue stream during the lease term and will also provide necessary support to the Master Tenant.

Notwithstanding the foregoing, if the City has not waived Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000) in Impact Fees and Exactions prior to issuance of the first construction document for the Project, then Developer shall not have any obligation to deposit funds into the Flower Market Legacy Business Fund. At the end 34 years, any unexpended funds shall be retained by the City to be used for job training, job retention, and other economic development purposes or shall be deposited into the fund from which it was diverted or the relevant successor fund.

(c) Eastern Neighborhoods Infrastructure Fee and Gateway Marker. Notwithstanding the provisions of Planning Code Section 423, Developer shall fund the design and complete the construction of an arch, monument, pillar or other physical marker, in a public location approved by the Planning Director, identifying the San Francisco Filipino Cultural Heritage District ("**Gateway Marker**"). The construction and permitting of the Gateway Marker shall be subject to the Planning Director's approval as to design and location, at his or her sole discretion following any required environmental review. Upon approval of the design, if any, the City shall enter into an in-kind agreement, using the City's standard form, to provide credit against Developer's Eastern Neighborhoods Infrastructure Impact Fees under Planning Code Section 423 in an amount equal to Developer's third party design and construction costs but not to exceed $300,000. In the event the Gateway Marker is not fully approved and permitted by the City three years after the Effective Date, the City may instead allocate $300,000 of the Developer's Eastern Neighborhoods Infrastructure Impact Fees paid, or to be paid, to the Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District, administered by the Mayor's Office of Housing and Community Development

under Administrative Code Section 10.100-52.

~~8.1.3~~6.9.3 Processing Fees. Developer shall pay all Processing Fees in effect, on a City-wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

9.6.10 Changes in Federal or State Laws.

~~9.1.1~~6.10.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the ~~"~~"**Public Health and Safety Exception**~~")~~") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the ~~"~~"**Federal or State Law Exception**~~");~~"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

9.1.26.10.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 6.8.4, as applicable.

9.1.36.10.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

9.1.46.10.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 6.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "~~)~~"**Law Adverse to Developer**~~"),~~"), then Developer

shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 6.8 would materially and adversely affect or limit the Community Benefits (a "~~"~~**Law Adverse to the City**~~"),~~"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 6.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Associated Community Benefits for each Building completed as set forth in Section 5.1.

10.6.11 No Action to Impede Approvals. Except and only as required under Section 6.8 the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 6.6.1.

11.6.12 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9; (v) the Effective Date of the Agreement; and (vi) the names of the Mortgagee that are subject to receiving notices under Section 11.3. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request. The City acknowledges that third parties with a property interest in the Project Site, such as mortgagees, acting in good faith, may rely upon such a certificate.

12.6.13 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 6. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Planning Code and the Central SOMA Plan..

13.6.14 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

~~14.~~7. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building commenced by Developer as set forth in Section 5.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and

subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

~~15.~~8. MUTUAL OBLIGATIONS

16.8.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when each Phase and all of the Associated Community Benefits tied to that Phase have also been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit N for the applicable property.

17.8.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals, and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals, and any Later Approvals, are implemented. Except for ordinary

administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department (in consultation with OEWD) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. Each City Agency responsible for reviewing any Later Approvals shall designate a single employee responsible for working with Developer and the Planning Department: (i) to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) to interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

~~8.2.1~~8.2.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

~~8.2.2~~8.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project is commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment

terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal. Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project (and therefore, there is more than one party that assumes obligations of "Developer" under this Agreement), then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project and only as to such portion, and no termination of this Agreement by such Party as to such Party's portion of the Project shall effect a termination of this Agreement as to any other portion of the Project.

~~8.2.3~~8.2.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

18.8.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals.

19.8.4 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement and the Approvals in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

~~20.~~9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

21.9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the ~~"~~"**Annual Review Date**~~");~~"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

22.9.2 Review Procedure. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 9.2.

~~22.1.1~~9.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation (not including any proprietary or confidential information, to the extent any exists), Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

~~22.1.2~~9.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the ~~"~~"**City Report**~~");~~"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

~~22.1.3~~9.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning

Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

~~22.1.4~~9.2.4 Default. The rights and powers of the City under this Section 9.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of a Default.

~~23.~~10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

24.10.1 Enforcement. The only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

25.10.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 10.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 10.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party

shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 10.3.

26.10.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations, provided City shall have the right to withhold Later Approvals for all or any part of the Project Site if Developer fails to fulfill the Flower Market Obligations as and when required under this Agreement. Subject to the foregoing, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site. For purposes of this Section 10, a Party shall include all of its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any

termination or other remedy against that Party may include the same remedy against all such Affiliates.

27.10.4 Remedies.

~~27.1.1~~10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections ~~10s~~10.4.3, 10.4.4, and 10.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

~~27.1.2~~10.4.2 Termination. Subject to the limitation set forth in Section 10.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 10.3 and 13.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer" (as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

~~27.1.3~~10.4.3 Limited Damages: The Parties have determined that except as set forth in this Section 10.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages

under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 10.6, and (5) the City shall have the right to administrative penalties or liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

~~27.1.4~~10.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which Developer is in Default or Developer has

failed to pay amounts due to the City under this Agreement; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City (subject to the Flower Market Obligation provisions described below). The City shall have the right to withhold a final certificate of occupancy within a Phase until all of the Associated Community Benefits tied to that Phase, together with the Flower Market Obligations, have been completed or Developer has provided the City with adequate security for completion of such Community Benefit (*e.g.,* a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney). For a Phase to be deemed completed, Developer shall have also completed all of the public open spaces and improvements for that Phase as set forth in Exhibit H or in a Later Approval; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance. Notwithstanding anything to the contrary above, the City shall have the right to withhold all certificates of occupancy and other Later Approvals Project-wide (against all Developers) if the Flower Market Obligations have not been satisfied when required. If the Payment Option has not been exercised, the Parties intend that the Post-Development Subtenants will be moved back to the Project Site first, and agree that City can withhold certificates of occupancy and Later Approvals for space at the Project Site until all of the Post-Development Subtenants (not including

those who elect to move elsewhere) have moved back to the Project Site in accordance with the Flower Market Obligations.

28.10.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

29.10.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks,

paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

~~30.~~11. FINANCING; RIGHTS OF MORTGAGEES

31.11.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the Effective Date, there are no Mortgages on the Project Site.

32.11.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 11.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from

or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 5.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

33.11.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address

for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

34.11.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 11.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, provided that such period is tolled for any period during which the Mortgagee is prohibited from proceeding with foreclosure proceedings, e.g. due to a bankruptcy filing, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

35.11.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any

obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as ~~"~~"**Foreclosed Property**~~")~~."). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 5.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

36.11.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

37.11.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

~~38.~~12. AMENDMENT; TERMINATION; EXTENSION OF TERM

39.12.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided that following a

Transfer, the City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 8.2.2, 8.4.2, and 12.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

40.12.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to Commence Construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later

Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

41.12.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Phase that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Phase that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 12.3 shall survive the termination of this Agreement.

42.12.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and no change to the Project that is permitted under the Central SOMA Plan shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this

Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project (or the Project Variant) as described in the Exhibits in keeping with its customary practices and the Central SOMA Plan, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

43.12.5 Extension Due to Legal Action or Referendum; Excusable Delay.

~~43.1.1~~12.5.1 Litigation and Referendum Extension. If any litigation is filed challenging the Central SOMA Plan, the Central SOMA Plan FEIR, this Agreement, or an Approval having the direct or indirect effect of delaying this Agreement, or any Approval (including but not limited to any CEQA determinations), Relocation Site Approval, or Permanent Off-Site Approval that is issued prior to the Relocation Date, including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, this Agreement, ~~or an Approval~~Approval, Relocation Site Approval, or Permanent Off-Site Approval that is issued prior to the Relocation Date is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals, Relocation Site Approvals, and Permanent Off-Site Approvals that are issued prior to the Relocation Date shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, ~~the~~ Relocation Site Approvals, and Permanent Off-Site

Approvals issued prior to the Relocation Date, the date of the initial grant of such Approval, Relocation Site Approval, or Permanent Off-Site Approval issued prior to the Relocation Date) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

~~43.1.2~~12.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such

delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

~~44.~~13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

13.1~~14~~.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a ~~"~~"**Transfer**~~"~~") without the City's consent, provided that it also transfers to such party (the ~~"~~"**Transferee**~~"~~") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the ~~"~~"**Transferred Property**~~"~~)~~.~~"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be the sole responsibility of the applicable Transferee (*i.e.*, the person or entity

that is the Developer for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ~~("~~("**CMA**~~")~~") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

13.214.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the ~~"~~"**Assignment and Assumption Agreement**~~").~~"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review within thirty (30) days after receipt, with such review being limited to confirming the Assignment and Assumption Agreement satisfies the requirements of this Agreement. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 13.1 shall not require the transfer of land or any other real property interests to the CMA.

13.314.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 13.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in

the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 9 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

13.414.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.

13.514.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

13.614.6 Rights of Developer. The provisions in this Section 13 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

~~14.~~15. DEVELOPER REPRESENTATIONS AND WARRANTIES

14.116.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this

Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

14.216.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

14.316.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

14.416.4 Notification of Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a

contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

1.6.16.5 ~~14.5~~ Other Documents. To the current, actual knowledge of _____ and _____, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

14.616.6 No Bankruptcy. Developer represents and warrants to the City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

~~15.~~17. MISCELLANEOUS PROVISIONS

15.117.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

15.217.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

15.317.3 Binding Covenants; Run With the Land. Pursuant to Section ~~6586~~65864 et seq. of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 13, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the

Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions of this Agreement, including without limitation Section 13, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code ~~Section~~Sections 1468-1470.

15.417.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

15.517.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

15.617.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

15.717.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

15.817.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

15.917.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

15.1017.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

15.1117.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other or additional person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, Flower Mart Project

To Developer:

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

with a copy to:

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

Attn: Daniel Frattin or Tuija Catalano

15.1217.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

15.1317.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

15.1417.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

15.1517.15 Tropical Hardwood and Virgin Redwood. The City 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.

15.1617.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

15.1717.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, or its successors and assigns, in the event of any Default by City, or for any amount, which may become due to Developer, or its successors and assigns, under this Agreement.

17.18 Non-Liability of Developer Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of Developer or affiliate of Developer shall be personally liable to City, or its successors and assigns, in the event of any Default by Developer, or for any amount, which may become due to City, or its successors and assigns, under this Agreement.

15.1817.19 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved on _____, 2019
Board of Supervisors Ordinance No. _____

Approved as to form:

DENNIS J. HERRERA, City Attorney

By:

~~Charles Sullivan~~Elizabeth A. Dietrich
Deputy City Attorney

APPROVED AND AGREED:

By: _____
Naomi Kelly, City Administrator

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited liability company

By: Kilroy Realty, L.P,
a Delaware limited partnership,
its Sole Member

By: Kilroy Realty Corporation,
a Maryland corporation,
its General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco ("SFMTA") has reviewed the Development Agreement (the "**Development Agreement**") between the City and KR Flower Mart LLC, a Delaware limited liability company ("**Developer**") to which this Consent to Development Agreement (this "**SFMTA Consent**") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA CPE and Addendum, including the MMRP, consented to and agrees to be bound by the Development Agreement as it relates to matters under the SFMTA's jurisdiction, including the Transportation Demand Management Program.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
Edward D. Reiskin, Director of Transportation

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

By: _____
Charles Sullivan, Deputy City Attorney

San Francisco Municipal Transportation Agency Board of Directors
Resolution No. _____
Adopted: _____, 2019

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

MEMORANDUM OF UNDERSTANDING #1
630-686 Brannan Street

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**") dated as of June 1, 2015, is made by and between the City and County of San Francisco, a Charter city and county (the "**City**"), acting by and through its Office of Economic and Workforce Development ("**OEWD**") and KR Flower Mart, LLC, a Delaware limited liability company ("**KRC**") in connection with a proposed project at 630-686 Brannan Street in San Francisco.

RECITALS

This MOU is made with regard to the following facts, intentions and understandings:

A. In April 2015, KRC filed applications for a preliminary project assessment and environmental review (Case Nos. 2015-004256PPA and 2015-004256E) for a multi-phased, mixed-use development plan covering 630-698 Brannan Street, 548 5th Street, and 149 Morris Street in the block bounded by Brannan, Bryant, Fifth, and Sixth Streets (as described in the application, and as may be revised and updated from time to time, the "**Project**").

B. The Project currently contemplates the demolition of the existing on-site flower market at the Property, and construction of up to 1.54 million square feet of new office and retail space, as well as the creation of a new flower mart, including parking and loading facilities ("**New Flower Mart**"). The Project also seeks to modify and improve circulation throughout the area. The final scope of the Project is not fixed at this stage in the public process. Accordingly, KRC and OEWD understand and agree that the Project will be refined and modified through the community and stakeholder review, environmental review, and planning processes.

C. In connection with the Project, KRC intends to apply for various discretionary approvals required for the Project, including but not limited to any conditional use authorizations or variances, allocations of office space, approval of parcel map, subdivision or lot line adjustments, approval and acceptance of any dedications, encroachments or sidewalk widening. KRC and the City desire to negotiate for other City agreements related to the construction of the New Flower Mart, benefits for its tenants, and other public benefits in connection with the Development, and KRC has requested that the City consider a development agreement in connection with the Project. The Project and the entitlements will require review and approval by the City's Planning Commission and Board of Supervisors, and may require approval of other City agencies.

D. OEWD is currently working with KRC, as well as the City Attorney's Office and other City agencies, to determine the appropriate scope of all of the Project transaction and entitlement documents. This MOU is to provide a payment mechanism for KRC to reimburse OEWD and other City agencies (including the City Attorney's Office) for staff time and materials expended on any component of the Project.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OEWD and KRC agree to the following:

1. Negotiations and Entitlement Process. OEWD, working closely with the Planning Department, shall act as the lead representative of the City in negotiating the substance of the proposed entitlement package, including any transaction or approval documents (such documents shall be collectively referred to as the "**Project Documents**"). OEWD shall consult with staff from affected City agencies, and such City agencies shall contribute personnel and staff time as may be directed by their respective directors or department heads. Following negotiations, all Project Documents shall be subject to review and approval of the Planning Commission, applicable City agencies, and the Board of Supervisors, each in their sole discretion.

2. Reimbursement of City Costs.

(a) KRC shall reimburse OEWD for the actual costs incurred by the City for all work associated with the preparing, adopting or negotiating the Project Documents for the Project. Eligible costs shall include, without limitation, the (1) fees and expenses of the City Attorney's Office staff at the rates charged by the City Attorney's Office to third party outside developers from time to time, (2) actual fees and expenses of any outside counsel and third party consultants, advisors, and professionals (including, but not limited to, real estate appraisers), (3) actual costs related to public outreach and information; and (4) costs of staff time for the City agencies consulted in communication with the Project Documents. Eligible costs shall not include costs that are paid or reimbursed through planning department or other project applications. Before engaging any outside counsel or consultants, OEWD shall obtain KRC's approval regarding the proposed engagement, which approval shall not be unreasonably withheld. OEWD shall be responsible for coordinating the billing of all City agencies as described in this section.

(b) OEWD will provide KRC with quarterly invoices. These invoices shall indicate the hourly rate for each OEWD or City staff member at that time, the total number of hours spent by each City staff member on the tasks during the invoice period, any additional costs incurred by the City and a brief non-confidential description of the work completed.

(c) The parties anticipate that OEWD and other City staff time to be reimbursed shall not exceed $250,000 based on following staffing (under a 40-hour work week): up to 10% of Director of Development's time and up to 25% of the Project Manager or Managers' time, plus City Attorney time. All City staff time will be billed in accordance with this MOU, and the above estimate shall not be considered a cap on costs. See Appendix A for current billing rates.

(d) KRC shall pay the invoiced amount within 45 calendar days of receipt from OEWD, provided that (i) that the maximum amount payable shall not exceed the budget established in subsection (c) above, as the same may be revised from time to time as provided in Section 14(a), (ii) in the event that City's costs and expenses exceed the amounts set forth in the approved budget, then, notwithstanding anything in this MOU to the contrary, City shall have the

right to suspend additional work on the Project under this MOU until the parties reach agreement on a revised budget and additional payments to be made by KRC, including any amounts due by KRC for work previously performed, and (iii) in the event the parties cannot reach agreement on a revised budget, or if KRC fails to pay any amounts due and owing hereunder, then City shall have the right to terminate this MOU without cost or liability.

(e) If KRC in good faith disputes any portion of an invoice, then within 60 calendar days of receipt of the invoice KRC shall provide written notice of the amount disputed and the reason for the dispute, and the parties shall use good faith efforts to reconcile the dispute as soon as practicable. KRC shall have no right to withhold the disputed amount. If any dispute is not resolved within 90 days of KRC's notice to City of the dispute, KRC may pursue all remedies at law or in equity to recover the disputed amount. KRC shall have no obligation to reimburse City for any cost that is not invoiced to KRC within twenty-four (24) months from the date the cost was incurred.

(f) If KRC submits an application for a development agreement, the parties may terminate this MOU and revise the payment mechanisms for the reimbursement of all City costs consistent with San Francisco Administrative Code Chapter 56.

4. City Limitation. Except as otherwise expressly set forth herein to the contrary, nothing in this MOU shall obligate OEWD or any other City department to expend funds or resources, nor shall anything in this MOU be construed as a limitation on any party's authority to contribute staff, funds or other resources to the processing, review and consideration of the Project. Nothing in this MOU shall limit the discretion to be exercised by City staff and City officials in connection with the Project.

5. No Liability; Termination. The parties are entering into this MOU in order to cooperate in negotiating the substance of an entitlement package with respect to the Project. The parties understand and agree that the City would not be willing to enter into this MOU if it could result in any liability or cost to the City. Accordingly, in the event that KRC believes that the City has violated any of the terms of this MOU, KRC's sole remedy shall be to terminate this MOU or seek recovery of disputed funds per Sec. 2(e) above. KRC shall be responsible for the eligible costs incurred by any of the City agencies before the termination notification. Notwithstanding anything to the contrary in this MOU, either party shall have the right to terminate this MOU at any time and for any reason without cost or liability by providing notice of termination to the other party, provided any such termination shall not relieve KRC of its reimbursement obligations with respect to work performed before the date of termination.

6. City Discretion. KRC acknowledges and agrees that by entering into this MOU, OEWD is not committing itself or agreeing to approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Planning Commission, the Board of Supervisors, the Mayor, or any other City agency, commission or department, and that the Project Documents and approvals are subject to the prior approval of the Planning Commission, the Board of Supervisors, and the Mayor (and perhaps other City agencies, as applicable), each in their sole and absolute discretion.

7. Assignment. KRC may assign its rights and obligations under this MOU to an affiliate or subsidiary entity at any time with notice to but without the consent of OEWD, provided, if such affiliate or subsidiary fails to pay amounts due hereunder, then KRC shall remain liable for such payment.

8. Environmental Review. The Project ultimately proposed by KRC shall be subject to a process of thorough public review and input and all necessary and appropriate approvals; that process must include environmental review under CEQA before a City department, commission, or any other City decision-maker may consider approving a project; and the Project will require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this MOU commits, or shall be deemed to commit, the City or a City official to approve or implement any project, and they may not do so until environmental review of the Project as required under CEQA has been completed. Accordingly, all references to the "Project" in this MOU shall mean the proposed project as revised and subject to future environmental review and consideration by the City. The City and any other public agency with jurisdiction over any part of the Project shall have the absolute discretion before approving that project to: (i) make such modifications to the Project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the Project; (iv) balance the benefits of the Project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the Project.

9. Notices. Unless otherwise indicated elsewhere in this MOU, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To OEWD: Ken Rich, Director of Development
c/o Sarah Dennis Phillips, Project Director
Office of Economic and Workplace Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: 415.554.5194
Email: ken.rich@sfgov.org

To KRC: Mike Sanford, Executive Vice President, Northern California
c/o Mike Grisso, Senior Vice President, Development and Land Planning
Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA, 94105
Phone: 415.778.7777
Fax: 415.243.8803
Email: mgrisso@kilroyrealty.com

Any notice of default must be sent by registered mail.

10. California Political Reform Act. The parties acknowledge that payments pursuant to this MOU from KRC to OEWD are payments to the City, not to any individual employee or officer of the City, and that the payments therefore are not "income" to any City employee or officer under the California Political Reform Act, California Government Code Section 81000, *et seq.*

11. Notification of Limitations on Contributions. KRC 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 whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, 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. KRC 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.

12. No Joint Liability. Nothing in this MOU shall be construed as giving a party the right or ability to bind other parties and nothing in this MOU shall be construed to create any joint liability with regard to, or as a result of, the activities undertaken by any of the parties, their employees, officers and/or agents. All employees, officers and/or agents of a party shall remain employees, officers and/or agents of that party and shall be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents.

13. Sunshine. KRC understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 et seq.) apply to this MOU and any and all records and materials submitted to the City in connection with this MOU.

14. Miscellaneous. (a) This MOU may be modified only in writing and by mutual consent of all parties. (b) This MOU shall become effective when signed by all OEWD and KRC. It shall remain in effect until terminated in writing by either party. (c) There are no intended third party beneficiaries of this MOU. The parties acknowledge and agree that this MOU is entered into for their benefit and not for the benefit of any other party. (d) This MOU shall be governed by the applicable laws of California. (e) This MOU contains all of the representations and the entire agreement between the parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU.

IN WITNESS WHEREOF, the parties have executed this MOU on the date set forth herein.

City and County of San Francisco, a
municipal corporation, acting by and through its
Office of Economic and Workforce Development

By: _____
Todd Rufo, Director

KR Flower Mart, LLC,
a Delaware limited liability company

By: Kilroy Realty, L.P.,
a Delaware limited partnership,
its sole member

By: Kilroy Realty Corporation
a Maryland corporation,
its general partner

By: _____
Mike Sanford, Executive Vice President, Northern California

By: _____
Mike Grisso, Senior Vice President, Development and Land Planning

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

Appendix A

OEWD / Other City Staff – Billing Rates

(Hourly rates as of June 1, 2015)

Director of Development (Ken Rich)	$140.00
Project Director (Sarah Dennis Phillips)	$123.00
Administrative Analyst	$60.00
Citybuild Director	$115.00
Workforce Compliance Officer	$85.00
Employment Liaison	$87.00

190A8

7-3-2019 Draft

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code

Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

FOR PROPERTY AT 5th and BRANNAN STREETS

Block 3778: Lots 1B, 2B, 4, 5, 47 and 48

TABLE OF CONTENTS

EXHIBITS AND SCHEDULES

Exhibits

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND KR FLOWER MART LLC

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this ____ day of _____, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), acting by and through its Planning Department, and KR FLOWER MART LLC, a Delaware limited liability company ("**Developer**"), pursuant to the authority of Section 65864 et seq. of the California Government Code and Chapter 56 of the Administrative Code. The City and Developer are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Article 1.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer owns and operates the approximately 295,144 square foot site along Brannan Street between 5th and 6th Streets, on Assessor's Block 3778, Lots 001B, 002B, 004, 005, 047 and 048, composed of the 141,992 square feet of flower market, approximately 4,900 square feet of existing retail uses, 45,549 square feet of vacant PDR space, and surface parking lots, as more particularly described on Exhibit A (the "**Project Site**").

B. The Developer proposes a mixed use development that will include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing approximately: 2,032,165 square feet of office space; 89,459 square feet of retail space; 115,000 rentable square feet of vendor space (including accessory retail space) for a new wholesale

flower market; 30 loading spaces; and 769 parking spaces; all as more particularly described in Exhibit B.1 (the "**Project**") and shown in Exhibit C.1. The exact numbers listed above may change, in keeping with Planning Department standard practices consistent with the Planning Code.

C. In order to satisfy the tenants' request to have a Payment Option (per Article 3), the Developer is also seeking entitlements for a revised project that replaces the on-site new wholesale flower market with approximately 113,036 square feet of other uses at the Project Site, consisting of a development with approximately: 2,061,380 square feet of office space; 90,976 square feet of retail space; 22,690 square feet of childcare use, including outdoor activity area; 9 loading spaces; and 632 vehicle parking spaces, all as more particularly described in Exhibit B.2 and shown in Exhibit C.2 (the **"Project Variant"**). All references in this Agreement to the "**Project**" shall mean (1) before selection under Article 3, both the Project and the Project Variant, and (2) following selection under Article 3, either the Project or the Project Variant, whichever is selected.

D. As part of the Project, Developer will relocate the existing flower market tenants to an interim facility constructed by Developer at the Temporary Site before Commencing Construction of the Project. Developer shall pay to move the flower market tenants back to the Project Site under the Project or to the Permanent Site under the Project Variant, as applicable. Alternatively, Developer may skip the Temporary Site and move the flower market vendors straight to the Permanent Site if the Permanent Facility has been completed at the Permanent Site by the time Developer initially moves the flower market vendors from the Project Site. These commitments were also made by Developer in a tri-party agreement between Developer, Tenant

Association, and San Francisco Flower Mart LLC, dated as of June 26, 2015, as amended ("**Tri-Party Agreement**"), as further described in Exhibit D.

E. The Project is anticipated to generate an annual average of approximately 8,050 construction jobs during construction and, on completion, an approximately $29.9 million annual increase in general fund revenues to the City and approximately $9.3 million annual increase in non-general fund revenues to the City.

F. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56. The Parties acknowledge that this Agreement is entered into in consideration of their respective burdens and benefits, including the representations and warranties, in this Agreement.

G. As a result of the development of the Project in accordance with this Agreement, the City as determined that additional benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These additional benefits include development of a new permanent home for the flower market, with subsidized

rents, the dedication of a housing parcel with no fee credit, onsite childcare, workforce commitments and certain public improvements as described herein.

H. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), "**CEQA Guidelines**"), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or the Developer's obligation to comply with all applicable Laws in connection with the development of the Project.

I. The Project Site is located in the recently adopted Central SOMA Plan area, which was approved by the Board of Supervisors on November 27, 2018 and December 4, 2018, pursuant to Ordinance Nos. 282-18, 296-18 and 280-18, Board of Supervisors File Nos. 180490, 180184, and 180185, respectively, which among other actions rezoned the Project Site for the CMUO (Central SOMA Mixed-Use Office) and MUR (Mixed Use Residential) zoning districts, and the 270-CS and 160-CS height and bulk districts.

J. The City analyzed the environmental impacts of the development density associated with the Project in the Central SOMA Plan Final Environmental Impact Report (**"Central SOMA FEIR"**), certified by the Planning Commission in Motion No. 20182, on May 10, 2018. Potential development at 2000 Marin Street, as the Temporary Site, was analyzed in the Bayview Hunters Point Redevelopment Projects and Rezoning Final Environmental Impact Report (**"Bayview FEIR"**), which was certified by [INSERT] on March 2, 2006. On July 3,

2019, the Environmental Review Officer (**"ERO"**) issued a Community Plan Exemption (**"CPE"**) and Addendum for the Project and the Temporary Site at 2000 Marin Street, including the mitigation monitoring and reporting program (**"MMRP"**). The CPE were prepared in accordance with CEQA and issued by the Planning Department in Case Nos. 2015-004256ENV. Copies of the Certificate of Determination are on file with the Board of Supervisors in File Nos. [XX] and are incorporated herein by reference.

K. On _____, 2019, the Planning Commission held a public hearing on this Agreement and the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56. Following the public hearing, the Planning Commission granted Approvals for the Project and adopted the MMRP, and further determined that the Project and this Agreement will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the policies set forth in Section 101.1 of the Planning Code (together the **"General Plan Consistency Findings"**). The information in the Central SOMA FEIR, Bayview FEIR, and CPE were considered by the City in connection with approval of this Agreement.

L. On _____, 2019, the Board of Supervisors, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA, approved this Agreement, incorporating by reference the General Plan Consistency Findings.

M. On _____, 2019, the Board adopted Ordinance Nos. [_____] approving this Agreement (File No. 190682) and authorizing the Planning Director to execute this

Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2019.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 **"Addendum"** has the meaning set forth in Recital J.

1.2 "**Administrative Code**" means the San Francisco Administrative Code.

1.3 "**Affiliate" or "Affiliates**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "**control**" means the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.4 "**Agreement**" means this Development Agreement, including the Recitals and Exhibits.

1.5 "**Annual Review Date**" has the meaning set forth in Section 9.1.

1.6 "**Applicable Laws**" has the meaning set forth in Section 6.2 (where not capitalized, "applicable Law" has its plain meaning and refers to Laws as otherwise defined herein).

1.7 "**Approvals**" means the City approvals and entitlements listed on Exhibit K.

1.8 "**Assignment and Assumption Agreement**" has the meaning set forth in Section 13.2.

1.9 "**Associated Community Benefits**" is defined in Section 4.1.

1.10 **"Bayview FEIR"** shall have the meaning set forth in Recital J.

1.11 "**Board of Supervisors**" or "**Board**" means the Board of Supervisors of the City and County of San Francisco.

1.12 "**Building**" means the Market Hall Building, the Blocks Building, or the Gateway Building (or collectively, the "**Buildings**"), as generally described in Exhibit B.

1.13 **"Central SOMA FEIR"** shall have the meaning set forth in Recital J.

1.14 "**Central SOMA Plan**" shall have the meaning set forth in Recital J.

1.15 "**CEQA**" has the meaning set forth in Recital H.

1.16 "**CEQA Findings**" means the CEQA findings made by the Planning Commission and the Board of Supervisors in approving this Agreement.

1.17 "**CEQA Guidelines**" has the meaning set forth in Recital H.

1.18 "**CFD**" means a community facilities district formed over all of the Project Site that is established under the CFD Act in accordance with the Central SOMA Plan.

1.19 "**CFD Act**" means the San Francisco Special Tax Financing Law (Admin. Code ch. 43, art. X), which incorporates the Mello-Roos Act, as amended from time to time.

1.20 "**Chapter 56**" has the meaning set forth in Recital F.

1.21 "**City**" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City

means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.22 "**City Agency**" or "**City Agencies**" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Site, including, without limitation, the City Administrator, Planning Department, MOHCD, OEWD, SFFD, SFMTA, SFPUC, DPW, DBI, together with any successor City agency, department, board, or commission. Nothing in this Agreement shall affect the jurisdiction or discretion of a City department that has not approved or consented to this Agreement in connection with the issuance or denial of a Later Approval. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors).

1.23 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

1.24 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in

connection with a City Default or which are payable by the City under Section 10.6 when Developer is the prevailing party.

1.25 "**City Parties**" has the meaning set forth in Section 5.6.

1.26 "**City Report**" has the meaning set forth in Section 9.2.2.

1.27 "**City-Wide**" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.28 "**CMA**" is defined in Section 13.1.

1.29 "**Commence Construction**" means the commencement of physical construction of the applicable Building foundation on the Project Site.

1.30 "**Community Benefits**" has the meaning set forth in Section 5.1.

1.31 "**Community Benefits Program**" has the meaning set forth in Section 5.1.

1.32 "**CPE**" has the meaning set forth in Recital J.

1.33 "**Default**" has the meaning set forth in Section 10.3.

1.34 "**Design Guidelines**" means the Key Development Site Guidelines adopted as part of the Central SOMA Plan.

1.35 "**Developer**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include (i) any Transferee as to the applicable Transferred Property, and (ii) any Mortgagee or assignee thereof that acquires title to any Foreclosed Property but only as to such Foreclosed Property.

1.36 "**Development Agreement Statute**" has the meaning set forth in Recital F, as in effect as of the Effective Date.

1.37 "**DPW**" means the San Francisco Department of Public Works.

1.38 "**Effective Date**" has the meaning set forth in Section 2.1.

1.39 "**Enacting Ordinance**" has the meaning set forth in Recital M.

1.40 "**Excusable Delay**" has the meaning set forth in Section 12.5.2.

1.41 "**Exercise Notice**" has the meaning set forth in Section 3.3.

1.42 "**Existing Standards**" has the meaning set forth in Section 6.2.

1.43 "**Existing Uses**" means all existing lawful uses of the existing Buildings and improvements (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on the Project Site as of the Effective Date.

1.44 "**Extended Option Period**" has the meaning set forth in Section 3.4.

1.45 "**Federal or State Law Exception**" has the meaning set forth in Section 6.8.1.

1.46 "**Finally Granted**" means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the CPE shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the CPE, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the CPE and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the CPE and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

1.47 "**Flower Market Obligations**" means Developer's obligations described in Article 3 and in subsections 5.1.1.

1.48 "**Foreclosed Property**" is defined in Section 11.5.

1.49 "**General Plan Consistency Findings**" has the meaning set forth in Recital K.

1.50 "**Gross Floor Area**" has the meaning set forth in Planning Code Section 102 as of the Effective Date.

1.51 "**Impact Fees and Exactions**" means any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, including offsets for any applicable fee credits, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to the Transportation Sustainability Fee (per Planning Code Section 411A), the Jobs-Housing Linkage Fee (per Planning Code Section 413), Child Care Fee (per Planning Code Section 414), Art Fee (per Planning Code Section 429), School Impact Fee (California Education Code Section 17620), Eastern Neighborhoods Infrastructure Impact Fee (per Planning Code Section 423), or fees, dedication or reservation requirements, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees (including CFD special taxes due under the Central SOMA Plan), SFPUC Capacity Charges, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws. A sample calculation of the applicable Impact Fees and Exactions is included in Exhibit P.

1.52 "**Interim Lease**" means a lease entered into by Developer, as tenant, and

the owner of the Temporary Site, for the temporary flower market, consistent with the requirements of the Tri-Party Agreement and this Agreement.

1.53 "**Later Approval**" means (i) any other land use approvals, entitlements, or permits from the City or any City Agency other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Project, including without limitation, design review approvals, improvement agreements, use permits, demolition permits, grading permits, site permits, Building permits, lot line adjustments, sewer and water connection permits, major and minor encroachment permits, street and sidewalk modifications, street improvement permits, street space permits, permits to alter, certificates of occupancy, transit stop relocation permits, subdivision maps, improvement plans, lot mergers, lot line adjustments, and re-subdivisions. A Later Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement.

1.54 "**Law(s)**" means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "**Laws**" shall refer to any or all Laws as the context may require.

1.55 "**Law Adverse to City**" is defined in Section 6.8.4.

1.56 "**Law Adverse to Developer**" is defined in Section 6.8.4.

1.57 "**Litigation Extension**" has the meaning set forth in Section 12.5.1.

1.58 "**Loan Commitment**" means the loan commitment made by a bona fide,

third party institutional lender to Alternate Landlord to provide the Debt for the Permanent Facility in accordance with the terms of this Agreement. The Loan Commitment will be subject to the approval of the City and Developer for consistency with this Agreement.

1.59 "**Losses**" has the meaning set forth in Section 5.6.

1.60 "**Material Change**" means any modification that would materially alter the rights, benefits or obligations of the City or Developer under this Agreement that is not consistent with the Central SOMA Plan or that (i) extends the Term, (ii) changes the permitted uses of the Project Site, (iii) decreases the Community Benefits, (iv) increases the maximum height, density, or bulk by more than ten percent (10%) the size of the Project or changes the parking ratios (other than as permitted under the Central SOMA Plan), or (vi) reduces the applicable rate for the Impact Fees and Exactions.

1.61 "**Mitigation Measures**" means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Later Approval.

1.62 "**MMRP**" means that certain mitigation monitoring and reporting program attached hereto as Exhibit L.

1.63 "**Mortgage**" means a mortgage, deed of trust or other lien on all or part of the Project Site, including mezzanine financing, to secure an obligation made by the applicable property owner.

1.64 "**Mortgagee**" means (i) any mortgagee or beneficiary under a Mortgage, and (ii) a person or entity that obtains title to all or part of the Project Site as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action.

1.65 "**Municipal Code**" means the San Francisco Municipal Code.

1.66 "**New City Laws**" has the meaning set forth in Section 6.7.

1.67 "**New Market Payment**" has the meaning set forth in Section 3.6.4.

1.68 "**New Wholesale Flower Market**" means the approximately 125,000 square foot flower market to be construction on the Project Site as part of the Project, as more particularly described in the project description in Exhibit B.1.

1.69 "**Non-City Agency**" means Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement.

1.70 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.71 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.72 "**Option Period**" has the meaning set forth in Section 3.3.

1.73 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement and shall also include any party that becomes a party to this Agreement, such as a Transferee.

1.74 "**Payment Notice**" has the meaning set forth in Section 3.4.

1.75 "**Payment Option**" has the meaning set forth in Section 3.6.

1.76 "**Permanent Facility**" means a permanent flower market facility to be constructed at the Permanent Site, in lieu of the New Wholesale Flower Market at the Project Site, pursuant to Section 3 and Exhibit F to this Agreement, in the event the Payment Option is exercised.

1.77 "**Permanent Interest Free Loan**" has the meaning set forth in Exhibit F-3.

1.78 "**Permanent KRC Contribution**" has the meaning set forth in Exhibit F-3.

1.79 "**Permanent Lease**" means the lease or agreement between Alternate Landlord and the Tenant Association, and/or its members, for the construction and use of the Permanent Facility, for not less than 15 years, that meets the requirements of this Agreement. The Permanent Lease will be subject to the approval of the City and Developer for consistency with this Agreement. The Parties will calculate the New Market Payment based on the terms of the Permanent Lease, as either set forth in the actual document or in a signed letter of intent.

1.80 "**Permanent Site**" has the meaning set forth in Section 3.6.1.

1.81 "**Phase**" means either Phase 1(a), Phase 1(b) or Phase 1(c), as applicable.

1.82 "**Phase 1(a)**" means the issuance of a certificate of occupancy and/or final completion for the Blocks Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H. If Payment Option is not exercised, Phase 1(a) will not be deemed complete until all Post-Development Subtenants who have entered into a Post-Development Sublease have been relocated back to the Project as part of the Developer's relocation program in accordance with the Tri-Party Agreement.

1.83 "**Phase 1(b)**" means the issuance of a certificate of occupancy and/or final completion for the Market Hall Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.84 "**Phase 1(c)**" means the issuance of a certificate of occupancy and/or final completion for the Gateway Building and the completion of the Associated Community Benefits and public improvements described in Exhibit H.

1.85 "**Planning Code**" means the San Francisco Planning Code.

1.86 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.87 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

1.88 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.

1.89 **"Post-Development Subtenant"** means each of those Existing Subtenants and Pre-Development Subtenants who pursuant to the terms of the Tri-Party Agreement enter into a Post-Development Sublease with the Developer at the New Wholesale Flower Market.

1.90 "**Post-Development Sublease**" means a lease agreement at the New Wholesale Flower Market between the Developer and each Post-Development Subtenant.

1.91 "**Pre-Development Costs**" means the Tenant Association's and its affiliates' documented third party costs of negotiating exhibits to this Agreement, the amendment to the Tri-Party Agreement, and the long-term lease for the Permanent Site, if applicable, and all investigation, design, feasibility and other predevelopment costs relating to the Stay Option and the Payment Option, including the completion of design and construction documents for the Permanent Facility, permitting and entitlement costs, and all fees and costs of completing the Permanent Facility other than construction costs, all as approved by the City as set forth in this Agreement.

1.92 **"Pre-Development Subtenant"** means each of those existing flower mart tenants who pursuant to the terms, and after the execution, of the Tri-Party Agreement entered into a lease agreement for space at the Project Site prior to the construction of the Project and the New Wholesale Flower Market.

1.93 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in

accordance with the City practice on a City-Wide basis.

1.94 "**Project**" means either the Project or the Project Variant, once determined in accordance with Article 3, together with Developer's rights and obligations under this Agreement.

1.95 "**Project Open Space**" means the privately owned, publicly accessible open space described in Exhibit I.

1.96 "**Project Site**" has the meaning set forth in Recital A, and as more particularly described in Exhibit A.

1.97 "**Project Variant**" means the mixed use development project described in Recital C and Exhibit B.2 and the Approvals.

1.98 "**Public Health and Safety Exception**" has the meaning set forth in Section 6.11.1.

1.99 "**Public Improvements**" means the following improvements: (i) new sidewalks and sidewalk amenities at a width and design to be determined by DPW and Planning Department staff in accordance with the Better Streets Plan, Central SOMA Plan, and Planning Code, (ii) curbs on the portions of Brannan, Fifth, Sixth, and Morris Streets adjoining the Project Site, repaving of _____ as outlined in the drawings attached to the Approvals from the Planning Commission; (iii) off-site public open space improvements under the elevated portion of Interstate-80 between.

1.100 "**Relocation Matters**" has the meaning set forth in Section 3.6.2.

1.101 "**Second Payment**" has the meaning set forth in Section 3.6.3.

1.102 "**SFFD**" means the San Francisco Fire Department.

1.103 "**SFMTA**" means the San Francisco Municipal Transportation Agency.

1.104 "**SFPUC**" means the San Francisco Public Utilities Commission.

1.105 "**SFPUC Capacity Charges**" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with the applicable City requirements.

1.106 "**Stay Notice**" has the meaning set forth in Section 3.4.

1.107 "**Stay Option**" has the meaning set forth in Section 3.5.

1.108 "**Subdivision Code**" means the San Francisco Subdivision Code.

1.109 "**Subdivision Map Act**" means the California Subdivision Map Act, California Government Code § 66410 *et seq.*

1.110 "**Temporary Facility**" means the temporary flower market facility to be built by Developer (if at all) at no cost to the City or to the flower market Vendors, and meeting the requirements of Exhibit E.

1.111 **"Temporary Site"** means the site owned by Developer, or leased by Developer under the Interim Lease, for the Temporary Facility. The Temporary Site will be at 2000 Marin Street, which is the pre-approved site per the Tri-Party Agreement, unless an alternative location is Viable and approved by Developer, the City and the Tenant Association. If 2000 Marin is not available because the SFPUC does not yet own the property by October 30, 2019, the City and Developer may agree upon an alternative site as the Temporary Site provided that (a) the site will include not less than 115,000 square feet of occupiable space [or not less than 100,000 square feet if the City determines that the site it can properly accommodate all Existing Subtenants and Pre-Development Subtenants that wish to relocate there], (b) the site will accommodate the Existing Subtenants' and Pre-Development Subtenants' continued operation of their businesses in substantially the same manner as the Existing Subtenants are operated as of the

date of the Tri-Party Agreement, including an equivalent amount of private and shared or common refrigeration as is available in the existing flower mart, and (c) the site allows all of the Existing Subtenants and Pre-Development Subtenants to be relocated together and at one time.

1.112 "**Temporary Site Approval**" means any land use approval, entitlement, or permit from the City or any City Agency, other than Approvals or Later Approvals, that are necessary or advisable for the interim use of the Temporary Site by the existing flower market tenants during the construction of the Project. The list of Temporary Site Approvals, and the Planning Code exceptions applicable to the Temporary Site, at 2000 Marin are included in Exhibit Q.

1.113 "**Tenant Association**" means the San Francisco Flower Market Tenants' Association.

1.114 "**Term**" has the meaning set forth in Section 2.2.

1.115 "**Third-Party Challenge**" means any administrative, legal or equitable action or proceeding instituted by any party other than the City or Developer challenging the validity or performance of any provision of this Agreement, the Project, the Approvals, Later Approvals, the CPE or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or Developer in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof.

1.116 "**Transfer," "Transferee" and "Transferred Property**" have the meanings set forth in Section 13.1, and in all events excludes (1) a transfer of ownership or membership interests in Developer or any Transferee, (2) grants of easement or of occupancy rights for existing or completed Buildings or other improvements (including, without limitation, space leases in Buildings), and (3) the placement of a Mortgage on the Project Site.

1.117 "**Transfer Agreement**" means that certain Agreement for Transfer of Real Estate attached as Exhibit S for the transfer of property outside the Project Site from Developer to the City to be used by the City for the development of affordable housing or to fund the development of affordable housing, as may be determined by City.

1.118 "**Transfer Parcel**" means vacant, unimproved land within the Central SoMa Plan Area, not less than 14,000 square feet, identified by Developer and acceptable to MOHCD, for conveyance to the City in accordance with the Transfer Agreement;

1.119 "**Transportation Program**" means the transportation program set forth in Exhibit J.

1.120 "**Tri-Party Agreement**" means that certain Tri-Party Agreement between Developer, the Tenant Association, and the San Francisco Flower Mart LLC, dated as of June 26, 2015, and amended on _____, 2019.

1.121 "**Upfront PD Payments**" has the meaning set forth in Section 1 to Exhibit F-3.

1.122 "**Vendors**" means the Existing Subtenants and Pre-Development Subtenants.

1.123 "**Vested Elements**" has the meaning set forth in Section 6.1.

1.124 "**Viable**" has the meaning set forth in Section 3.6.1.

1.125 "**Workforce Agreement**" means the Workforce Agreement attached hereto as Exhibit O.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting

Ordinance is effective and operative ("**Effective Date**").

2.2 Term. The initial term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter (the "**Initial Term**"), unless extended or earlier terminated as provided herein, provided however, that (i) the Initial Term shall be extended for each day of a Litigation Extension, and (ii) Developer shall have the right to terminate this Agreement with respect to the Phase 1(a) upon completion of the Phase 1(a), including all Associated Community Benefits for the Phase 1(a), as set forth in Section 8.1. If Developer Commences Construction of the Phase 1(a) during the Initial Term and thereafter continues to diligently prosecute the Phase 1(a) to completion, and is not in Default (or has cured a Default pursuant to Section 10.3) under this Agreement between the date of exercise and the date the Initial Term expires, then Developer shall have the right to extend the term of this Agreement for an additional five (5) years (the "**Extended Term**") by delivering to the City, at any time during the last year of the Initial Term, a notice of extension. The 5-year extension shall be automatic upon Developer's delivery of the extension notice unless Developer is in Default (not including a Default that was cured pursuant to Section 10.3) at the time Developer sends the notice or before the start of the Extended Term, in which case the City may reject the notice by written notice of rejection to Developer. The term of this Agreement (the "**Term**") shall mean the Initial Term plus, if applicable, the Extended Term. The performance period or the term for any Approval or Later Approval shall be for the longer of the Term or the performance period or term otherwise applicable to such Approval or Later Approval. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2.3 Phasing. Developer shall complete Phase 1(a) first, before Phase1(b) or Phase 1(c), so as to complete the Flower Market Obligations and the Associated Community Benefits for Phase 1(a) before the receipt of certificates of occupancy for the office portions of the Blocks Building or for any of the other Buildings. Subject to the requirement to complete Phase 1(a) first, Developer may complete the Phases in any order and may develop Phases simultaneously.

3. TEMPORARY AND PERMANENT FACILITY

3.1 Temporary Site. Before Developer may begin demolition on the portion of the Project Site that is actively occupied by Existing Subtenants and Pre-Development Subtenants, Developer shall (a) obtain the exclusive right to occupy improved or unimproved real property for use of the Temporary Site, consistent with the requirements of the Tri-Party Agreement and this Agreement, (b) complete the Temporary Facility in accordance with the specifications set forth in Exhibit E (upon completion, the "**Temporary Facility**"), and (c) move the Existing Subtenants and Pre-Development Subtenants that wish to be relocated to the Temporary Facility (collectively, the "**Vendors**") at no cost to the Vendors in accordance with the Tri-Party Agreement. Developer shall ensure that the Existing Subtenants and Pre-Development Subtenants have the continuing right to occupy the Temporary Facility under the Interim Lease, on the same terms of their existing leases at the Project Site (subject to any negotiated changes in the Tri-Party Agreement) for not less than five (5) years, including any extension options, from the date that the last of the Vendors is moved to the Temporary Facility; provided the City may agree to a shorter term if the City determines that less time is needed for the completion of construction of the New Wholesale Flower Market or the Permanent Facility, whichever is the case. Notwithstanding the foregoing, Developer may skip the Temporary Facility and move the Existing Subtenants and Pre-

Development Subtenants straight to the Permanent Site if the City selects the Payment Option and the Permanent Facility at the Permanent Site has been completed by the initial move date.

3.2 Payment Option or Stay Option. As set forth in this Article 3, the City shall elect either the Payment Option or the Stay Option. Following the City election, Developer shall either (i) complete the New Wholesale Flower Market at the Project Site under the Stay Option, or (ii) make the New Market Payment to the City under the Payment Option.

3.3 Option Period; Exercise Notice. In accordance with this Article 3, the City shall exercise the Stay Option or the Payment Option on or before the date that is sixty (60) days following the Effective Date, without extension for a Litigation Extension or Excusable Delay but subject to extension as set forth in Section 3.4 (the "**Option Period**"). The City shall exercise the Stay Option or the Payment Option by delivery of written notice to Developer in the form attached as Exhibit G-1 (the "**Exercise Notice**"). Developer has no right or obligation to consider whether any of the City's requirements for exercise of the Stay Option or the Payment Option have been satisfied, and Developer shall rely solely upon receipt of the Exercise Notice in the form attached in order to proceed with the Stay Option or the Payment Option, as selected by the City. Developer has no right to condition or reject the City's exercise of the Payment Option or to determine the location of the Permanent Site provided, for purposes of determining the New Market Payment amount, the Permanent Site must substantially meet the requirements in Exhibit F.

3.4 Potential City Extension of the Option Period; Final City Election. During the Option Period, the Tenant Association, acting through counsel for the Tenant Association, will send to the City a notice requesting that the City proceed with the Stay Option in the form attached as Exhibit G-2 (the "**Stay Notice**") or the Payment Option in the form attached as Exhibit G-3 (the "**Payment Notice**"). If the City does not receive the Payment Notice or the Stay Notice before the

end of the Option Period, the City has the right, in its sole discretion, to extend the Option Period by up to an additional sixty (60) days (the "**Extended Option Period**") by providing to Developer a written notice of extension; provided, the City shall in fact extend the Option Period for the Extended Option Period if the City receives a written request to do so by the Tenant Association, acting through counsel for the Tenant Association. During the Extended Option Period, if any, OEWD and Planning staff agree to meet and confer with the Tenant Association upon request in an effort to identify or narrow the potential sites that may become the Permanent Site and any related issues. If, notwithstanding any such extension, the City still does not receive the Payment Notice or the Stay Notice before the end of the Extended Option Period, then the City shall elect either the Payment Option or the Stay Option based upon all of the information available as of such date. The City shall make such election by delivering the Exercise Notice to Developer, with a copy to the Tenant Association, within twenty (20) days following the end of the Extended Option Period. If the City fails to send the Exercise Notice by the end of this twenty (20) day period, then the City will be deemed to have selected the Payment Option.

3.5 Stay Option. If the Tenant Association elects the Stay Option and sends the Stay Notice before the end of the Option Period, the City will send the Exercise Notice to Developer electing the Stay Option, and the Payment Option shall terminate and be no further force or effect. Upon such election, Developer shall proceed with the New Wholesale Flower Market on the Project Site and not the Project Variant.

3.6 Payment Option.

3.6.1 Permanent Site. The Payment Option is designed to provide for the construction of the Permanent Facility at an alternative site proposed by the Tenant Association and approved by the City (the "**Permanent Site**"). While the City expects that

the Tenant Association will agree upon a Permanent Site that is Viable, the City retains the right to select the Permanent Site if the Tenant Association does not select a site in San Francisco that is Viable or the Tenant Association cannot otherwise agree on a site. Nothing in this Agreement shall prevent the City from changing the Permanent Site upon discovery that the previously approved Permanent Site is no longer Viable, and nothing shall require the City to add funds to the New Market Payment in order to complete the Permanent Facility at the Permanent Site.

3.6.2 Viability. For purposes of viability of the Permanent Site under this section, a proposed site will be deemed "**Viable**" if the following conditions are met: (i) the site is in San Francisco and zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (ii) that site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can accommodate the design and specifications set forth in Exhibit F-1 for the Permanent Facility; (iv) the site is owned by an entity willing to enter into negotiations for a long term lease, consistent with the requirements of this Agreement and the Tri-Party Agreement, including the length of term, the rents payable by the vendors with nondisturbance protections for the vendors, and the construction of the Permanent Facility with the New Market Payment; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit F-1 for the Permanent Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources. For purposes of viability of the

Temporary Site under Section 3.1, a proposed site will be deemed **"Viable"** if the following conditions are met: (i) the site is zoned for industrial use or a use that permits wholesale flower market and ancillary uses; (ii) the site is or can be made vacant on a reasonable schedule, taking into account the time needed to obtain any governmental approvals required to use the site as a wholesale flower market with ancillary uses; (iii) the size, configuration and location of the site is suitable for use as a wholesale flower market and can accommodate the design and specifications set forth in Exhibit E for the Temporary Facility; (iv) the site is owned by an entity willing to enter into negotiations for the Interim Lease, consistent with the requirements of this Agreement and the Tri-Party Agreement, including the timely availability of the site, the length of term, the rents payable by the vendors with nondisturbance protections for the vendors; and (v) the site has an existing building that substantially meets, or could be modified so as to substantially meet, the requirements in Exhibit E for the Temporary Facility, or on which such a building could be constructed with the New Market Payment and other available funding sources.

3.6.3 Exercise Conditions. The City shall exercise the Payment Option if the following requirements are satisfied before expiration of the Option Period, or the Extended Option Period if applicable. The City may waive any of the following requirements except for the requirement set forth in subsection (c):

(a) The City receives the Payment Notice from the Tenant Association's counsel, confirming that the Tenant Association has affirmatively voted and approved, at a duly noticed and held election in accordance with the Tenant Association's bylaws, (1) the City's exercise of the Payment Option, (2) one or more proposed locations in San Francisco, acceptable to the Tenant Association, for the Permanent Site (and

identifying those sites), (3) a release of any claims by the Tenant Association against the City regarding this Agreement, the Payment Option, the Tri-Party Agreement and any other related documents, the Temporary Site and the Permanent Site, and the relocation of vendors in connection with the Project or the Project Variant (collectively, the "**Relocation Matters**"), (4) a release of any claims by the Tenant Association against Developer for the Relocation Matters, but excluding all of Developer's prospective obligations under this Agreement and any other agreement between the Tenant Association and Developer; and (5) an indemnity by the Tenant Association, in favor of the City and Developer, for any claims made by any flower market vendor challenging any of the Relocation Matters; and

(b) The Tenant Association sends to the City with the Payment Notice, a brief summary of the advantages of the alternative sites proposed by the Tenant Association for the Permanent Site, which may include to the extent available (1) a preliminary budget for the improvements, as well as a statement of anticipated funding sources (on top of the New Market Payment made by Developer, if any), and (2) any additional information that the Tenant Association believes is relevant to the determination of Viability of the proposed locations; and

(c) The Planning Director and the OEWD Director of Development determine, acting reasonably, that at least one of the locations proposed by the Tenant Association is Viable for the Permanent Facility, or if not, that an alternative location for the Permanent Site selected by the City is Viable.

3.6.4 Completion of Design and Construction Documents. Following exercise of the Payment Option, Developer, the Tenant Association and City

shall work together with the Alternate Landlord to complete design and construction documents for the Permanent Facility, in accordance with the process in Exhibit F-2.

3.6.5 Pre-Development Payments. As set forth in Exhibit F-3, the Developer shall pay to the City Two Hundred and Fifty Thousand Dollars ($250,000) and Seven Hundred and Fifty Thousand Dollars ($750,000) in Upfront PD Payments as part of Pre-Development Costs, within fifteen (15) and thirty (30) days following the Effective Date, respectively, so that the City can pay the same to the Tenant Association for the Tenant Association's and its affiliates' documented third party costs of negotiating exhibits to this Agreement, the amendment to the Tri-Party Agreement, investigation, design, feasibility and other predevelopment costs relative to the Stay Option and the Payment Option, including costs incurred before the Effective Date. The Tenant Association shall send invoices of Pre-Development Costs incurred to the City, for approval and processing through the OEWD Development Director. Upon exhaustion of the Upfront PD Payments, the Tenant Association shall invoice Pre-Development Costs monthly or quarterly, or as otherwise agreed by the City, for review and approval by the City and Developer, which approval will not be unreasonably withheld or delayed. The City, Developer and the Tenant Association will meet regularly to review budgets, invoices and contracts for all Pre-Development Costs, and to cooperate on the completion of all design and construction documentation for the Permanent Facility, as set forth in Exhibit F-2. If there is any disagreement between Developer and the Tenant Association on the appropriateness or amount of any Pre-Development Cost or any design element for inclusion in the Permanent Facility, the matter will be decided by the OEWD Development Director. For Pre-Development Costs, Developer may pay amounts due and owing directly to the City or to

the specified contractor or entity (with standard documentation) that performed the work. Developer and the Tenant Association shall each maintain books and records for all Pre-Development Costs and payments made by Developer and the Tenant Association, respectively, which will be subject to City review and audit upon request.

3.6.6 New Market Payment. Developer shall pay to the City the development cost payment determined in accordance with the Permanent Facility specifications in Exhibit F-1 and using the process in Exhibit F-2 (the "**New Market Payment**"). The New Market Payment is designed to cover certain applicable costs associated with the feasibility determination and leasing of the Permanent Site and the design, permitting and construction of the Permanent Facility, based on the actual designs and construction documents completed to date, and for any items not yet completed, based on the assumptions set forth in Exhibit F including the rent schedule. For sake of clarity, the New Market Payment includes all Pre-Development Costs (based on actuals to date of determination), and thus all amounts previously paid by Developer for Pre-Development Costs, but excluding feasibility analysis costs, will be credited against the New Market Payment. The process for determining the New Market Payment will begin within thirty (30) days following the earlier of (1) City's notice to Developer that all Pre-Development Cost work has been completed, (2) the second anniversary of the date that the last of the Existing Subtenants and Pre-Development Subtenants has been moved to the Temporary Facility, or (3) the third anniversary of the Effective Date, subject to potential extension at the City's discretion in the event the above date is more than six (6) months away from the anticipated receipt of the first temporary certificate of occupancy for the Project. [*New Market Payment timing by Developer.*]

3.6.7 Use of New Market Payment. Upon receipt, the City shall hold the New Market Payment for costs relating to the Permanent Facility. In no event shall New Market Payment funds be used to pay any vendor to retire, to go out of business, or to move its business to an alternative location. The funds shall be held by the City's Controller, and the City shall establish disbursement procedures and safeguards to ensure that all New Market Payment funds are properly used and disbursed as contemplated by this Agreement. The New Market Payment funds may be commingled with other funds of the City for purposes of investment and safekeeping, but the City's Controller shall maintain records as part of the City's accounting system to account for all the expenditures and the remaining balance.

3.6.9 Payment Authorization. By approving this Agreement, the Board of Supervisors understands that the City will make payments, using Developer's funds, to the Tenant Association or the Alternate Landlord or their contractors and agents, and the Board of Supervisors authorizes the Controller, OEWD and other City staff to take such actions as needed to make such payments consistent with this Agreement, including, if necessary, the assignment of a City vendor number for payment notwithstanding the lack of a City contract. The City waives or overrides any ordinances or processes that would otherwise prevent the City from making the payments contemplated by this Agreement. Without limiting the foregoing, the parties understand and agree that the New Market Payment are not City funds and the construction of the Permanent Facility is not a public work under Administrative Chapter 6.

3.6.10 Contracting Safeguards. The City anticipates that the Tenant Association's or its landlord's construction contracts and professional services will be

negotiated to ensure competitive market rates, and that appropriate safeguards will be established to ensure that there is no overpayment, self-dealing or conflicts of interest. Contracts with funding from the New Market Payment shall include First Source Hiring, prevailing wage, and other City workforce requirements.

3.6.11 Excess Funds. If New Market Payment funds remain unexpended upon completion of the New Flower Market or ten (10) years following the Effective Date, whichever is earlier, the City shall use the unexpended funds to subsidize affordable PDR uses and for other community benefits, as determined by the Planning Director and the Director of OEWD.

3.7 Developer's Rights and Obligations During and After Payment Option Exercise. Developer and the Tenant Association shall have no right to challenge the appropriateness of or the amount of any expenditure, so long as it is disbursed by the City in good faith in accordance with this Agreement. Developer shall have no right or obligation regarding the exercise of the Payment Option or the Stay Option. Subject to compliance with Exhibit F-2 processes, Developer also shall have no right to object to the Permanent Site selection, the design or size of the Permanent Facility (except, for purposes of determining the New Market Payment, the facility must be in substantial conformance with the specifications set forth in Exhibit F), or the contractors or agents selected by the Tenant Association or the City. The City shall, working with the Tenant Association, use good faith efforts to assist in the design and construction of the Permanent Facility generally consistent with the description outlined in Exhibit F. Upon the City's exercise of the Payment Option and provided Developer pays the Pre-Development Costs and the New Market Payment in a timely manner as required by this Agreement, (1) Developer will have no obligation to build the New Flower Market at the Project Site or otherwise ensure completion of

the Permanent Facility, (2) Developer shall have the right, but not the obligation, to proceed with the Project Variant in accordance with the requirements of this Agreement, and (3) Developer shall be deemed to have satisfied the Community Benefits obligations under Section 5.1.1(a)-(b). The Tenant Association's or its landlord's failure to start or complete the Permanent Facility for any reason shall not be a breach by Developer under this Agreement, and Developer's sole obligation relative to the Permanent Facility, following payment of the New Market Payment, shall be to pay moving costs to the Temporary Site and to then to the Permanent Site, provided that such moving costs are incurred no later than the end of the Interim Lease or six years from the Effective Date, whichever is later.

3.8 City Decisions. Except where otherwise noted, all discretionary decisions relating to City actions under this Article 3 shall be made jointly by the Planning Director and the OEWD Director of Development. The Planning Director and the OEWD Director of Development will consult other City officials as they deem appropriate.

3.9 No City Liability. Following exercise of the Payment Option, OEWD and Planning staff shall use good faith efforts to assist the Tenant Association with development of the Permanent Facility at the finally selected Permanent Site. Following exercise of the Stay Option, OEWD and Planning staff shall use good faith efforts to monitor and enforce Developer's obligations to build the New Wholesale Flower Market at the Project Site. But nothing in this Agreement shall create any City liability to Developer, to the Tenant Association, or to any flower market Vendor relating to the New Wholesale Flower Market, the Permanent Facility, or to the Relocation Matters. All interested persons are given notice, and understand and agree, that completion of the New Wholesale Flower Market or the Permanent Facility will likely involve many challenges, and that no particular outcome can be guaranteed. By entering into this

Agreement, the City is not guarantying the successful completion of the replacement market or any other result. The City would not be willing to enter into this Agreement without this provision. Without limiting Developer's indemnity obligations in this Agreement, if and to the extent that City is required to expend any funds or staff time defending this Agreement or any discretionary decisions made by the City related to this Article 3 or the Relocation Matters from a claim made by the Tenant Association or any flower market Vendor, the City may reimburse itself from the Upfront PD Payments or the New Market Payment, if any (which shall, in turn, reduce the amounts available for construction of the Permanent Facility).

4. GENERAL RIGHTS AND OBLIGATIONS

4.1 Project and Project Variant's Compliance with Certain Design Requirements. Concurrently with the approval of this Agreement, certain Planning Code Text Amendments applicable to the Project were approved by the Board of Supervisors, as listed in Exhibit R.

4.2 Development of the Project. Developer shall have the vested right to develop the Project and the Temporary Facility in accordance with and subject to the provisions of this Agreement, the Approvals, Later Approvals, and Temporary Site Approvals, and the City shall consider and process all Later Approvals for development of the Project and the Temporary Facility at the Temporary Site, in accordance with and subject to the provisions of this Agreement. The Parties acknowledge (i) that immediately before the approval of this Agreement, the City approved and granted the Approvals for the Project as listed in Exhibit K, and (ii) that Developer may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Project as a matter of right, subject to the attainment of any required Later Approvals and any Non-City Approvals, as needed.

4.3 Workforce. Developer shall require project sponsors, contractors, consultants, subcontractors and subconsultants, as applicable, to undertake workforce development activities in both the construction and end use phases of the Project in accordance with the Workforce Agreement.

4.4 Community Facility Districts. The City intends to form a CFD under the CFD Act to finance or seek reimbursement of certain costs as set forth in the SOMA Plan. Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the CFDs or other charges set forth in the Central SOMA Plan, or the issuance of additional bonds or other financing secured by CFD special taxes or the application of bond proceeds consistent with the SOMA Plan. Once established, Developer shall not institute, or cooperate in any manner with, proceedings to repeal or reduce the Central SOMA Plan fees or the CFD special taxes. The provisions of this Section shall survive the expiration of this Agreement, and Developer shall include the requirements of this Section in any sale agreement or lease for all or part of the Property.

4.5 Transfer Parcel. Before the start of construction of the Blocks Building, the City, acting through MOHCD, and Developer shall enter into the Transfer Agreement, substantially in the form attached as Exhibit S, for the Transfer Parcel proposed by Developer and approved by MOHCD. Developer shall convey the Transfer Parcel to the City in accordance with the Transfer Agreement on or before issuance of the first certificate of occupancy for the Blocks Building. The City shall use the Transfer Parcel to develop affordable housing; provided if the City decides after acceptance that it cannot develop affordable housing on the Transfer Parcel, the City may sell the Transfer Parcel and use the net sales proceeds for affordable housing within the boundaries of Central SoMa, Eastern SoMa or Western SoMa Area Plans.

5. PUBLIC BENEFITS; DEVELOPER OBLIGATIONS AND CONDITIONS TO DEVELOPER'S PERFORMANCE

5.1 Community Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, including, but not limited to, those set forth in this Article 5 (the "**Community Benefits**"). The City acknowledges and agrees that a number of the Community Benefits would not be otherwise achievable without the express agreement of Developer under this Agreement. Developer acknowledges and agrees that, as a result of the benefits to Developer under this Agreement, Developer has received good and valuable consideration for its provision of the Community Benefits, and that the City would not be willing to enter into this Agreement without the Community Benefits. Payment or delivery of each of the Community Benefits is tied to a specific phase of the Project, as described in the Phasing Plan or elsewhere in this Agreement (with each Phase, an "**Associated Community Benefit**"). Time is of the essence with respect to the completion of the Community Benefits.

5.1.1 Community Benefits. Developer shall provide the following Community Benefits (collectively, the "**Community Benefit Programs**"):

(a) the construction and development of the New Wholesale Flower Market on the Project Site or alternatively, if the Payment Option is exercised, payment of the New Market Payment for construction of the New Flower Market at the Permanent Site in accordance with Article 3;

(b) the rent subsidies described in Article 3;

(c) the relocation of the Pre-Development Subtenants to the

Temporary Site, and relocation of Post-Development Subtenants who have executed a Post-Development Sublease back to the Project Site or payment for the relocation to the Permanent Site, as applicable, in accordance with Article 3 and the Tri-Party Agreement, including the requirement that all Pre-Development Subtenants shall be moved together at one time (the collective obligations in subparagraphs (a) through (c) shall be referred to as the "**Flower Market Obligations**");

(d) the Workforce Program, as described in Exhibit O;

(e) the Project Open Space and Public Improvements, as described in Exhibit I;

(f) the Transportation Demand Management Program attached as Exhibit J;

(g) conveyance of the Transfer Parcel to the City, in accordance with the Transfer Agreement, at no cost to City;

(h) under the Project Variant, Developer shall construct a subsidized child care center in Phase 1(a), consisting of approximately 23,000 square feet at the Gateway Building, for lease to a qualified non-profit child care operator for ten (10) years at a cost not exceeding landlord's actual costs for operating expenses; and

(i) the payment of $5 million to Mercy Housing California, to pay for costs related to the Sunnydale Hub project, on or before the issuance of the first construction document for the Project (or Project Variant).

5.1.2 Conditions to Performance of Community Benefits. Developer's obligation to perform each Associated Community Benefit is expressly conditioned upon each and all of the following conditions precedent:

(a) All Approvals and Later Approvals for the applicable Phase to which the Associated Community Benefit is tied shall have been Finally Granted, including a Prop M allocation necessary to build that Phase consistent with the Approvals, except to the extent that such Later Approvals (and Temporary Site Approvals, if applicable) have not been obtained or Finally Granted due to the failure of Developer to timely initiate and then diligently and in good faith pursue such Later Approvals. Whenever this Agreement requires completion of an Associated Community Benefit with a Phase, the City may withhold a certificate of occupancy for the Building in that Phase until the required Associated Community Benefit is completed or Developer has provided the City with adequate security for completion of such Associated Community Benefit (*e.g.,* a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney); and

(b) Developer shall have Commenced Construction of the Building in the applicable Phase to which the Associated Community Benefit applies.

5.2 No Additional CEQA Review Required; Reliance on CPE and Addendum for Later Approvals. The Parties acknowledge that the CPE and Addendum prepared for the Project and 2000 Marin as the Temporary Site, respectively, complies with CEQA. The Parties further acknowledge that (a) the CPE and Addendum contain a thorough environmental analysis of the Project, including the Temporary Site, and demonstrate that the Project's impacts were previously analyzed in the Central SOMA FEIR and the Addendum, as the case may be; (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (c) the Board of Supervisors adopted CEQA Findings. Accordingly, the City does not intend to conduct any further environmental review or

mitigation under CEQA for any aspect of the Project vested under this Agreement. The City shall rely on the CPE and Addendum, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with the Temporary Site or a change in the location of the Temporary Site, the Permanent Site, affordable housing dedication site, or any Later Approvals to the extent that such additional environmental review is required by applicable Laws, including CEQA.

5.2.1 Compliance with CEQA Mitigation Measures. Developer shall comply with all Mitigation Measures imposed as applicable to the Project except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, Developer shall be responsible for the completion of all mitigation measures identified as the responsibility of the "owner" or the "project sponsor". The Parties expressly acknowledge that the CPE and the associated MMRP are intended to be used in connection with each of the Later Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the Material Changes or otherwise to address significant environmental impacts as defined by CEQA created by an approval or permit; provided, however, any such conditions must be in accordance with applicable Law.

5.3 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City employee working with Developer's contractor or subcontractor, applicant for employment with such contractor or subcontractor, or

against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

5.4 City Cost Recovery.

5.4.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 6.7.

5.4.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Later Approvals.

5.4.3 Developer shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Later Approvals, and in processing and issuing any Later Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice complying with Section 5.5.4 from the City.

5.4.4 OEWD shall provide Developer on a quarterly basis (or such alternative period as agreed to by the Parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed (provided, for the City Attorney's Office, the

billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to Developer will not include a description of the work). OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties, then OEWD may send an invoice to Developer that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice but subject to the eighteen (18) month deadline set forth below in this Section 5.5.4. Developer's obligation to pay the City Costs shall survive the termination of this Agreement. Developer shall have no obligation to reimburse the City for any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of Developer, and to the extent not confidential, shall make such records available for inspection by Developer.

5.4.5 If Developer in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Developer shall have no right to withhold the disputed amount. If any dispute is not resolved within ninety (90) days following Developer's notice to the City of the dispute, Developer may pursue all remedies at law or in equity to recover the disputed amount.

5.5 Prevailing Wages. Certain contracts for work at the Project Site may be public works contracts if paid for in whole or part out of public funds, as the terms "public work" and "paid for in whole or part out of public funds" are defined in and subject to exclusions and

further conditions under California Labor Code sections 1720 - 1720.6. In connection with the Project, Developer shall comply with all California public works requirements as and to the extent required by State law. In addition, Developer agrees that all persons performing labor in the construction of Public Improvements under this Agreement will be: (1) paid not less than the Prevailing Rate of Wages as defined in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), and (2) provided the same hours, working conditions, and benefits as provided for similar work performed in San Francisco County in Administrative Code section 6.22(f). Developer further agrees to employ Apprentices on the Public Improvement work in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing the Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. City's Office of Labor Standards Enforcement ("**OLSE**") enforces labor laws, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

5.6 Indemnification of City. Developer shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a Default by Developer under this Agreement, (ii) Developer's failure to comply with any Approval, Later Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Later Approvals to comply with any Federal or State

Laws, the Existing Standards or any permitted New City Laws, (iv) any accident, bodily injury, death, personal injury, or loss of or damage to property occurring on the Project Site (or the public right of way adjacent to the Project Site) in connection with the construction by Developer or its agents or contractors of any improvements pursuant to the Approvals, Later Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between Developer, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between Developer and any Transferee or any subsequent owner of any of the Project Site relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between Developer and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to Developer's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four (4) years.

6. VESTING AND CITY OBLIGATIONS

6.1 Vested Rights. By granting the Approvals, the City has made a policy decision that the Project, as described in and as may be modified in accordance with the Approvals, is in the best interests of the City and promotes the public health, safety and welfare. Accordingly, the City in granting the Approvals and vesting them through this Agreement is limiting its future discretion with respect to Later Approvals and Temporary Site Approvals to the extent they include elements that were approved as part earlier Approvals. The criteria for City review and approval of Later Approvals is set forth in Section 6.3. Consequently, the City shall not use its discretionary authority in considering and approving an application for Later Approvals or Temporary Site Approvals to change the policy decisions reflected by the Approvals or otherwise to prevent or to delay development of the Project or the Project Variant as set forth in the Approvals. Developer shall have the vested right to develop the Project as set forth in this Agreement, including without limitation with the following vested elements: the locations and numbers of Buildings proposed, the land uses, height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for open space, vehicular access and parking (including parking ratios), and the Prop. M allocation made for the Project on the Effective Date (collectively, the "**Vested Elements**"; provided the Existing Uses on the Project Site shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent building permits or approvals, including Later Approvals and Temporary Site Approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each Later Approval and Temporary Site Approval, once granted, shall be deemed an Approval for purposes of this Section 6.1.

6.2 Existing Standards. The City shall process, consider, and review all Later Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the Subdivision Code), and all other applicable City policies, rules and regulations, as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted New City Laws as set forth in Section 6.6, and (iii) this Agreement (collectively, "**Applicable Laws**").

6.3 Criteria for Later Approvals. Developer shall be responsible for obtaining applicable Later Approvals before the start of construction that requires such approvals. The City, in granting the Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to Later Approvals to the extent that they are consistent with the Approvals and this Agreement. The City shall not disapprove applications for Later Approval based upon an item or element that is consistent the Approvals, and shall consider all such applications in accordance with City's customary practice, normal discretion and Applicable Laws, subject to the requirements of this Agreement. The City may subject a Later Approval to any condition that is necessary to bring the Later Approval into compliance with Applicable Laws. For any part of a Later Approval request that has not been previously reviewed or considered by the applicable City Agency (such as additional details or plans), the City Agency shall exercise its discretion consistent with the Approvals and the Planning Code, and otherwise in accordance with the City's customary practice. Nothing in this Agreement shall preclude the City from applying New City Laws for any development not within the definition of the "Project" or the Temporary Site under this Agreement.

6.4 Expeditious Processing of Subsequent Approvals. Upon the City's receipt from the Developer a completed application (with any required supporting documentation) for

one of more Later Approvals, the City shall use reasonable efforts to promptly commence and complete all steps necessary to act on such applications in a timely way and in accordance with applicable Laws.

6.5 Strict Building Code Compliance. Notwithstanding anything in this Agreement to the contrary, when considering any application for a Later Approval, the City or the applicable City Agency shall apply the applicable provisions, requirements, rules, or regulations that are contained in the San Francisco Building Codes, including the Mechanical Code, Electrical Code, Green Building Code, Housing Code, Plumbing Code, Fire Code, and the Public Works Code and Subdivision Code and other uniform construction codes applicable on a City-Wide basis. This shall not be construed to prohibit exceptions, equivalencies, or other administrative relief available under such Codes.

6.6 Denial of a Later Approval or Temporary Site Approval. If the City denies any application for a Later Approval that implements a Building that is part of the Project or a Temporary Site Approval for the Temporary Site, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with this Agreement, earlier Approvals, and Applicable Laws, and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's reasonable satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, earlier Approvals and Applicable Laws, and does not include new or additional information or materials that give the City a reason to object to the application under the standards set forth in this Agreement.

6.7 New City Laws. All future changes to Existing Standards and any other

Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**New City Laws**") shall apply to the Project, the Project Site, and the Temporary Site except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.8.

6.7.1 New City Laws shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of the Project or the Temporary Site at 2000 Marin, or any part thereof, or otherwise require any reduction in the square footage, number, or size of the proposed Buildings or change the location of proposed Buildings or change or reduce other improvements from those permitted under the Approvals;

(b) limit or reduce the height, bulk, or mass of the Project, or any part thereof, or otherwise require any reduction in the height, bulk, or mass of individual Buildings or other improvements that are part of the Project under the Approvals;

(c) limit, reduce or change the location of vehicular access, or the amount or location of parking or loading from that permitted under the Approvals;

(d) limit any land uses for the Project from that permitted under the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) materially delay, limit or control the rate, timing, phasing, or sequencing of the Project, including the demolition of existing buildings at the Project

Site, except as expressly set forth in this Agreement;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for permits or approvals required on a City-Wide basis, that relate to the construction of improvements, and that do not prevent construction of the Project as intended by this Agreement;

(h) limit or control the availability of public utilities, services or facilities, or any privileges or rights to public utilities, services, or facilities for the Project;

(i) impose any regulation or other requirement that controls commercial rents or purchase prices charged within the Project or on the Project Site, except as set forth in this Agreement and the Tri-Party Agreement;

(j) materially limit the processing or procuring of applications and approvals of Later Approvals that are consistent with Approvals;

(k) impose new or modified Impact Fees and Exactions on the Project (as is expressly prohibited in Section 6.7.2); or

(l) Reduce the amount of allowable parking or loading for the Project or the Temporary Site.

6.7.2 The Developer may, at its sole discretion, elect to have a New City Law that conflicts with this Agreement be applied to the Project or the Project Site by giving the City written notice of its election to have a New City Law applied, in which case such New City Law shall be deemed to be an Existing Standard;

6.7.3 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications and

development-specific condominium map or plan applications) with respect to some or all of the Project Site, to subdivide, reconfigure or merge parcels within the Project Site as is required or may be desirable in order to developer a particular phase of the Project the Project or to lease, mortgage or sell all or some portion of it. The specific boundaries of parcels shall be set by Developer and approved by the City during the subdivision process. Nothing in this Agreement shall authorize Developer to subdivide or use any of the Project Site for purposes of sale, lease or financing in any manner that conflicts with the Subdivision Map Act or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals or Later Approvals.

6.8 Proposition M Office Allocation. The Project includes up to 2,061,380 gross square feet ("**GSF**") of office development proposed to be constructed in three phases: (i) Phase 1(a) with up to 1,384,578 GSF of office, (ii) Phase 1(b) with up to 351,895 GSF of office; and (iii) Phase 1(c) with up to 324,907 GSF of office. Before the Effective Date, by Motion No. _____ (the "**Office Allocation Motion**"), the Planning Commission adopted findings pursuant to Planning Code Section 321(b)(1) that up to 2,061,380 GSF of office development at the Project Site contemplated by this Agreement and the Central SOMA Plan and Design Guidelines promotes the public welfare, convenience and necessity, and in doing so it considered the criteria in Planning Code Section 321(b)(3)(A)-(G). The findings contained in the Office Allocation Motion are incorporated into this Agreement. Because the office development contemplated by the Project has been found to promote the public welfare, convenience and necessity, the determination required under Section 321(b), where applicable, will be deemed to

have been made for the entire Project (i.e., up to 2,061,380 GSF of office development undertaken consistent with the Project).

(a) In the Office Allocation Motion, the Planning Commission also granted up to 1,384,578 GSF of Prop M office allocation for Phase 1(a).

(b) Additional Prop M allocations for Phase 1(b) and Phase 1(c) are necessary for completion of the Project and to support the viability of the Associated Public Benefits for each respective Phase. An application for the Phase 1(b) and 1(c) Prop M allocations is on file with the Planning Department under Case No. 2017-000663OFA. If Developer is not then in default under this Agreement, the Planning Commission shall consider the Phase 1(b) office allocation at its first regularly scheduled hearing on or after October 17, 2021, unless otherwise requested by the Developer. Developer shall notify the Planning Director not less than 60 days in advance of the hearing date to ensure that the matter is added to the calendar, and Developer has the right to make changes to its existing application at any time before such notification date. Provided the design of the Phase 1(b) office building remains consistent with the Office Allocation Motion, the Planning Commission shall give priority to the Phase 1(b) office development under Sections 320-325 over all office development proposed elsewhere in the City, subject to the existing priorities previously given to (a) the Mission Bay South Project Area; (b) the Transbay Transit Tower proposed for development on Lot 001 of Assessor's Block No. 3720; and (c) the Treasure Island development project. Notwithstanding the above, no office development project can be approved that would cause the then applicable annual limitation contained in Planning Code Section 321 to be exceeded, and the Planning Commission shall consider the design of the Phase 1(b) office building to confirm that it remains consistent with the Planning Commission's findings under Section 321(b)(3)(A)-(G) in the Office Allocation Motion. The requirements for

Planning Commission approval described above will apply to Phase 1(b) except to the extent such application would be prohibited by applicable law.

(c) Developer shall have the greater of the period provided by Applicable Laws or three (3) years from the date on which each Prop. M allocation is granted under this Agreement to obtain a site permit for office development for the applicable phase of the Project, as may be extended by a Litigation Extension (if any), but otherwise subject to the provisions of Planning Code Section 321(d)(2).

6.9 Fees and Exactions.

6.9.1 Generally. The Project and the Temporary Site shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 6.7, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or the Temporary Site or impose new conditions or requirements for the right to develop the Project or the Temporary Site (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 6.7 are intended to implement the intent of the Parties that Developer have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

6.9.2 Impact Fees and Exactions. During the Term, as extended by the Litigation Extension (if any), no Impact Fees and Exactions shall apply to the Project (or the Project Variant) or components thereof except for (i) those Impact Fees and

Exactions specifically set forth on Exhibit P, and (ii) the SFPUC Capacity Charges, as expressly set forth below in this Section. The Impact Fees and Exactions and SFPUC Capacity Charges shall be calculated and determined at the time payable in accordance with the City requirements on that date, and the Parties acknowledge and agree that the Impact Fees and Exactions shall be subject to the Planning Department's final confirmation once the applicable final land uses and Gross Floor Area are determined; provided, in determining the amount of the Impact Fees and Exactions during the Initial Term only (as extended by Litigation Extension, if any), the rates will be subject to annual escalation in accordance with the methodology currently provided in Planning Code Section 409 from the Effective Date to the date that the Applicable Impact Fee and Exaction is paid. During the Extension Term (if any), Developer shall be subject to any increase or decrease in the fee amount payable and any changes to the methodology of calculation (e.g., use of a different index to calculate annual increases), but will not be subject to any new types of Impact Fees and Exactions or modification to existing Impact Fees and Exactions after the Effective Date. No Impact Fees or Exactions shall apply to the use of the Temporary Site for pre-existing uses or for new spaces constructed for flower market tenants.

6.9.3 Processing Fees. Developer shall pay all Processing Fees in effect, on a City-wide basis, at the time that Developer applies for a Later Approval for which such Processing Fee is payable in connection with the applicable part of the Project.

6.10 Changes in Federal or State Laws.

6.10.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall

exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Later Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i)(a) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public, or (b) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (ii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

6.10.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations under this Agreement, then such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with

such Law, subject to the provisions of Section 6.8.4, as applicable.

6.10.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

6.10.4 Effect on Agreement. If any of the modifications, amendments or additions described in this Section 6.8 would materially and adversely affect the construction, development, use, operation, or occupancy of the Project as currently contemplated by the Approvals, or any material portion thereof, such that the Project, or the applicable portion thereof, becomes economically infeasible (a "**Law Adverse to Developer**"), then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Section 6.8 would materially and adversely affect or limit the Community Benefits (a "**Law Adverse to the City**"), then the City shall notify Developer and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 6.8.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue.

If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) Developer shall have the right to terminate this Agreement following a Law Adverse to Developer upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to Developer; provided, notwithstanding any such termination, Developer shall be required to complete the Associated Community Benefits for each Building completed as set forth in Section 5.1.

6.11 No Action to Impede Approvals. Except and only as required under Section 6.8 the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 6.6.1.

6.12 Estoppel Certificates. Developer may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to Developer, a potential Transferee, or a potential lender to Developer, in writing that to the best of the Planning Director's knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) Developer is not in Default in the

performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9; (v) the Effective Date of the Agreement; and (vi) the names of the Mortgagee that are subject to receiving notices under Section 11.3. The Planning Director, acting on behalf of the City, shall execute and return such certificate within thirty (30) days following receipt of the request. The City acknowledges that third parties with a property interest in the Project Site, such as mortgagees, acting in good faith, may rely upon such a certificate.

6.13 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and may continue as such uses may be modified by the Project, provided that any modification thereof not a component of or contemplated by the Project is subject to Planning Code Section 178 and the applicable provisions of Section 6. Developer may install interim or temporary uses on the Project Site, which uses must be consistent with those uses allowed under the Planning Code and the Central SOMA Plan.

6.14 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute, on its own initiative, proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Site unless the new district is City-Wide or Developer gives its prior written consent to or requests such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without

limitation, any tax or assessment targeted solely at all or any part of the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

7. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof. There is also no requirement that development be initiated or completed within any period of time or in any particular order, subject to the requirement to complete Associated Community Benefits for each Building commenced by Developer as set forth in Section 5.1. The development of the Project is subject to numerous factors that are not within the control of Developer or the City, such as availability of financing, interest rates, access to capital, and similar factors. Except as expressly required by this Agreement, the City acknowledges that Developer may develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion, Revocation or Termination. Within thirty (30) days after any early revocation or termination of this Agreement (as to all or any part of the Project Site), the Parties agree to execute a written statement acknowledging such revocation or termination, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, within thirty (30) days after Developer's request, when each Phase and all of the Associated Community Benefits tied to that Phase have also been completed, the City and Developer shall execute and record a notice of completion in the form attached as Exhibit N for the applicable property.

8.2 General Cooperation; Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Later Approvals, and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals, and any Later Approvals, are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs that Developer reimburses through the payment of Processing Fees. The Parties agree that the Planning Department (in consultation with OEWD) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. Each City Agency responsible for reviewing any Later Approvals shall designate a single employee responsible for working with Developer and the Planning Department: (i) to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) to interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that

avoids delay and redundancies.

8.2.1 Developer shall assist and cooperate with the City at Developer's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, Developer shall have the right to monthly invoices for all such costs.

8.2.2 To the extent that any such action or proceeding challenges or a judgment is entered limiting Developer's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project is commenced or not), including the City's actions taken pursuant to CEQA, Developer may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and Developer shall jointly seek to have the Third-Party Challenge dismissed and Developer shall have no obligation to reimburse City defense costs that are incurred after the dismissal. Notwithstanding the foregoing, if Developer conveys or transfers some but not all of the Project, or a party takes title to Foreclosed Property constituting only a portion of the Project (and therefore, there is more than one party that assumes obligations of "Developer" under this Agreement), then only the Party holding the interest in such portion of the Project shall have the right to terminate this Agreement as to such portion of the Project and only as to such portion, and no termination of this Agreement by such Party as to such Party's portion of the Project

shall effect a termination of this Agreement as to any other portion of the Project.

8.2.3 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Later Approvals unless the third party obtains a court order preventing the activity.

8.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals.

8.4 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement and the Approvals in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code (as of the Effective Date), at the beginning of the second week of each January following final adoption of this Agreement and for so long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

9.2 Review Procedure. In conducting the required initial and annual reviews of

Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 9.2.

9.2.1 Required Information from Developer. Within sixty (60) days following request by the Planning Director, Developer shall provide a letter to the Planning Director explaining, with appropriate backup documentation (not including any proprietary or confidential information, to the extent any exists), Developer's compliance with this Agreement for the preceding calendar year, including, but not limited to, compliance with the requirements regarding Community Benefits. The burden of proof, by substantial evidence, of compliance is upon Developer. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

9.2.2 City Report. Within sixty (60) days after Developer submits such letter, the Planning Director shall review the information submitted by Developer and all other available evidence regarding Developer's compliance with this Agreement, and shall consult with applicable City Agencies as appropriate. All such available evidence, including final staff reports, shall, upon receipt by the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "**City Report**"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this Section shall be included in the City Costs.

9.2.3 Effect on Transferees. If Developer has effected a Transfer so that its interest in the Project Site has been divided between Developer and Transferees or between or among Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee, and if appealed, the Planning Commission and Board of Supervisors shall make its determinations and take its action separately with respect to Developer and each Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee has not complied with the terms and conditions of this Agreement, such action by the Planning Director, Planning Commission, or Board of Supervisors shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

9.2.4 Default. The rights and powers of the City under this Section 9.2 are in addition to, and shall not limit, the rights of the City to terminate or take other action under this Agreement on account of the commission by Developer of a Default.

10. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

10.1 Enforcement. The only Parties to this Agreement are the City and Developer. Except as expressly set forth in this Agreement (for successors, Transferees and Mortgagees), this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

10.2 Meet and Confer Process. Before sending a notice of default in accordance

with Section 10.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement, or (ii) if a delay in sending a notice pursuant to Section 10.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, then such Party shall be deemed to have satisfied the requirements of this Section and may proceed in accordance with the issuance of a notice of default under Section 10.3.

10.3 Default. The following shall constitute a "**Default**" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, if Developer conveys or

transfers some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties that assumed Developer obligations, provided City shall have the right to withhold Later Approvals for all or any part of the Project Site if Developer fails to fulfill the Flower Market Obligations as and when required under this Agreement. Subject to the foregoing, a default by one "Developer" shall not be a Default by any other "Developer" that owns or controls a different portion of the Project Site. For purposes of this Section 10, a Party shall include all of its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any termination or other remedy against that Party may include the same remedy against all such Affiliates.

10.4 Remedies.

10.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 10s.4.3, 10.4.4, and 10.5, in the event of a Default, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity.

10.4.2 Termination. Subject to the limitation set forth in Section 10.4.4, in the event of a Default, the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. Any such termination shall be effective upon the date set forth in the notice of termination, which shall in no event be earlier than sixty (60) days following delivery of the notice. Consistent with Sections 10.3 and 13.3, there are no cross-defaults under this Agreement, and therefore if there is more than one "Developer"

(as it relates to different parts of the Project Site), then any termination of this Agreement for Default will be limited to the Developer that sent or received the termination notice.

10.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 10.4.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law, not including damages but including specific performance and termination, are particularly appropriate remedies for enforcement of this Agreement. Consequently, Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, (2) the City shall have the right to recover actual damages for Developer's failure to make any payment due under any indemnity in this Agreement, (3) to the extent a court of competent jurisdiction determines that specific performance is not an available remedy with respect to an unperformed Associated Community Benefit, the City shall have the right to monetary damages equal to the costs that the City incurs or will incur to complete the Associated Community Benefit as determined by the court, (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 10.6, and (5) the City shall have the right to administrative penalties or

liquidated damages if and only to the extent expressly stated in an Exhibit to this Agreement or in the applicable portion of the San Francisco Municipal Code incorporated into this Agreement. For purposes of the foregoing, "**actual damages**" means the actual amount of the sum due and owing under this Agreement, with interest as provided by Law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

10.4.4 City Processing/Certificates of Occupancy. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which Developer is in Default or Developer has failed to pay amounts due to the City under this Agreement; provided, however, if Developer has conveyed or transferred some but not all of the Project or a party takes title to Foreclosed Property constituting only a portion of the Project, and, therefore, there is more than one party that assumes obligations of "Developer" under this Agreement, then the City shall continue to process requests and take other actions as to the other portions of the Project so long as the applicable Developer as to those portions is current on payments due the City (subject to the Flower Market Obligation provisions described below). The City shall have the right to withhold a final certificate of occupancy within a Phase until all of the Associated Community Benefits tied to that Phase, together with the Flower Market Obligations, have been completed or Developer has provided the City with adequate security for completion of such Community Benefit (*e.g.,* a bond or letter of credit) as approved by the Planning Director in his or her sole discretion (following consultation with the City Attorney). For a Phase to be deemed completed, Developer shall have also completed all of the public open spaces and improvements for that Phase as set forth in

Exhibit H or in a Later Approval; provided, if the City issues a final certificate of occupancy before such items are completed, then Developer shall promptly complete such items following issuance. Notwithstanding anything to the contrary above, the City shall have the right to withhold all certificates of occupancy and other Later Approvals Project-wide (against all Developers) if the Flower Market Obligations have not been satisfied when required. If the Payment Option has not been exercised, the Parties intend that the Post-Development Subtenants will be moved back to the Project Site first, and agree that City can withhold certificates of occupancy and Later Approvals for space at the Project Site until all of the Post-Development Subtenants (not including those who elect to move elsewhere) have moved back to the Project Site in accordance with the Flower Market Obligations.

10.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Nothing in

this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "**reasonable attorneys' fees and costs**" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians, and others not admitted to the bar but performing services under the supervision of an attorney. The term "**reasonable attorneys' fees and costs**" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

11. FINANCING; RIGHTS OF MORTGAGEES

11.1 Developer's Right to Mortgage. Nothing in this Agreement limits the right of Developer to mortgage or otherwise encumber all or any portion of the Project Site for the benefit of any Mortgagee as security for one or more loans. Developer represents that, as of the

Effective Date, there are no Mortgages on the Project Site.

11.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and Section 11.5), a Mortgagee, including any Mortgagee who obtains title to the Project Site or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or any part thereof or to guarantee such construction or completion. The foregoing provisions shall not be applicable to any party who, after a foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to some or all of the Project Site from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself, on which certain Associated Community Benefits must be completed as set forth in Section 5.1. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other person or entity to devote the Project Site or any part thereof to any uses other than uses consistent with this Agreement and the Approvals, and nothing in this Section shall be deemed to give any Mortgagee or any other person or entity the right to construct any improvements under this Agreement (other than as set forth above for required Community Benefits or as needed to conserve or protect improvements or construction already made) unless or until such person or entity assumes Developer's obligations under this Agreement.

11.3 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the

real property which is the subject of the breach or default who has previously made a written request to the City therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this Agreement, the City shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the City to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure. In accordance with Section 2924b of the California Civil Code, the City requests that a copy of any notice of default and a copy of any notice of sale under any Mortgage be mailed to the City at the address for notices under this Agreement. Any Mortgagee relying on the protections set forth in this Article 10 shall send to the City a copy of any notice of default and notice of sale.

11.4 Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 11.3, each Mortgagee shall have the right, at its option, to commence within the same period as the Developer to remedy or cause to be remedied any Default, plus an additional period of: (a) thirty (30) days to cure a monetary Default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the City nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the City that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, provided that such period is tolled for any period during which the Mortgagee is prohibited from proceeding with

foreclosure proceedings, e.g. due to a bankruptcy filing, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the City. Any such Mortgagee or Transferee of a Mortgagee who shall properly complete the improvements relating to the Project Site or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

11.5 Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this Agreement, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of the Project Site (referred to hereafter as "**Foreclosed Property**"). A Mortgagee that, by foreclosure under a Mortgage, acquires title to any Foreclosed Property shall take title subject to all of the terms and conditions of this Agreement, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this Agreement and shall have all of the rights and obligations of Developer under this Agreement as to the applicable Foreclosed Property, including completion of the Associated Community Benefits under Section 5.1. Upon the occurrence and continuation of an uncured default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this Agreement, the City shall be afforded all its remedies for such uncured default as provided in this Agreement.

11.6 No Impairment of Mortgage. No default by Developer under this Agreement shall invalidate or defeat the lien of any Mortgagee. No foreclosure of any Mortgage

or other lien shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations under this Agreement or constitute a default under this Agreement.

11.7 Cured Defaults. Upon the curing of any event of default by any Mortgagee within the time provided in this Article 10 the City's right to pursue any remedies with respect to the cured event of default shall terminate.

12. AMENDMENT; TERMINATION; EXTENSION OF TERM

12.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer; provided that following a Transfer, the City and Developer, or any Transferee, may amend this Agreement as it affects Developer or the Transferee and the portion of the Project Site owned by Developer or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 2.2, 8.2.2, 8.4.2, and 12.2, this Agreement may only be terminated with the mutual written consent of the Parties. Any amendment to this Agreement that does not constitute a Material Change may be agreed to by the Planning Director (and, to the extent it affects any rights or obligations of a City department, with the approval of that City Department). Any amendment that is a Material Change will require the approval of the Planning Director, the Planning Commission and the Board of Supervisors (and, to the extent it affects any rights or obligations of a City department, after consultation with that City department).

12.2 Early Termination Rights. Developer shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement in its entirety at any time if Developer does not Commence Construction on any part of the

Project Site by the date which is five (5) years following the Effective Date. Thereafter, the City shall, upon sixty (60) days prior notice to Developer, have the right, in its sole and absolute discretion, to terminate this Agreement if the Developer has not Commenced Construction; provided Developer can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of Developer's intent to Commence Construction and the Developer thereafter Commences Construction within one hundred twenty (120) days following delivery of Developer's notice to the City, or, if unable to actually Commence Construction within said time period, demonstrates reasonable, good faith and continuing efforts to Commence Construction, such as by pursuing all necessary Later Approvals, and thereafter promptly Commences Construction upon receipt of the Later Approvals.

12.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals with respect to the terminated portion of the Project Site, except as to any Approval pertaining to a Phase that has Commenced Construction in reliance thereon. In the event of any termination of this Agreement by Developer resulting from a Default by the City and except to the extent prevented by such City Default, Developer's obligation to complete the Associated Community Benefits shall continue as to the Phase that has Commenced Construction and all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement to this Agreement as to any such surviving obligations. The City's and Developer's rights and obligations under this Section 12.3 shall survive the termination of this Agreement.

12.4 Amendment Exemptions. No issuance of a Later Approval, or amendment of an Approval or Later Approval, shall by itself require an amendment to this Agreement, and

no change to the Project that is permitted under the Central SOMA Plan shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Later Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Later Approval, or between this Agreement and any amendment to an Approval or Later Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Later Approval or the proposed amendment to an Approval or Later Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project (or the Project Variant) as described in the Exhibits in keeping with its customary practices and the Central SOMA Plan, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Later Approval or any amendment to an Approval or Later Approval that conflicts with this Agreement.

12.5 Extension Due to Legal Action or Referendum; Excusable Delay.

12.5.1 Litigation and Referendum Extension. If any litigation is filed challenging the Central SOMA Plan, the Central SOMA Plan FEIR, this Agreement, or an Approval having the direct or indirect effect of delaying this Agreement or any Approval (including but not limited to any CEQA determinations), including any challenge to the validity of this Agreement or any of its provisions, or if the Central SOMA Plan, this Agreement, or an Approval is suspended pending the outcome of an

electoral vote on a referendum, then the Term of this Agreement and all Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension (or as to Approvals, the date of the initial grant of such Approval) to the end of such litigation or suspension (a "**Litigation Extension**"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

12.5.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes, or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources or the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction within the standard or customary time period for such issuing authority following Developer's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, changes in market conditions, or the rejection of permit, authorization or approval requests based upon Developer's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's

obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay, a Party shall have all rights and remedies available under this Agreement, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement.

13. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

13.1 Permitted Transfer of this Agreement. At any time, Developer shall have the right to convey, assign or transfer all of its right, title and interest in and to all or part of the Project Site (a "**Transfer**") without the City's consent, provided that it also transfers to such party (the "**Transferee**") all of its interest, rights or obligations under this Agreement with respect to such portion of the Project Site together with any portion required to complete the Associated Community Benefits for such portion (the "**Transferred Property**"). Developer shall not, by Transfer, separate a portion of the Project Site from the Associated Community Benefits tied to that portion of the Project Site without the prior written consent of the Planning Director. Notwithstanding anything to the contrary in this Agreement, if Developer Transfers one or more parcels such that there are separate Developers within the Project Site, then the obligation to perform and complete the Associated Community Benefits for a Building shall be

the sole responsibility of the applicable Transferee (*i.e.*, the person or entity that is the Developer for the legal parcel on which the Building is located); provided, however, that any ongoing obligations (such as open space operation and maintenance) may be transferred to a residential, commercial or other management association ("**CMA**") on commercially reasonable terms so long as the CMA has the financial capacity and ability to perform the obligations so transferred.

13.2 Notice of Transfer. Developer shall provide not less than ten (10) days' notice to the City before any proposed Transfer of its interests, rights and obligations under this Agreement, together with a copy of the assignment and assumption agreement for that parcel (the "**Assignment and Assumption Agreement**"). The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the Director of Planning, not to be unreasonably withheld or delayed. The Director of Planning shall use good faith efforts to complete such review within thirty (30) days after receipt, with such review being limited to confirming the Assignment and Assumption Agreement satisfies the requirements of this Agreement. Notwithstanding the foregoing, any Transfer of Community Benefit obligations to a CMA as set forth in Section 13.1 shall not require the transfer of land or any other real property interests to the CMA.

13.3 Release of Liability. Upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto if required pursuant to Section 13.2 above), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, as specified in the Assignment and

Assumption Agreement, and the assignee/Transferee shall be deemed to be "**Developer**" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such default shall not constitute a Default by Developer or any other Transferee with respect to any other portion of the Project Site and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Site, except as otherwise provided herein. Additionally, the annual review provided by Section 9 shall be conducted separately as to Developer and each Transferee and only as to those obligations that Developer or such Transferee has under this Agreement.

13.4 Responsibility for Performance. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific Building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed, as specifically described in the Mitigation Measure, and Developer and all Transferees assume this risk.

13.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Site and undertakes any development activities at the Project Site, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Project Site or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Site.

13.6 Rights of Developer. The provisions in this Section 13 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses to facilitate development of the Project Site, (ii) encumbering the Project Site or any portion of the improvements thereon by any Mortgage, (iii) granting an occupancy leasehold interest in portions of the Project Site, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, and none of the foregoing shall constitute a Transfer for which the City's consent is required.

14. DEVELOPER REPRESENTATIONS AND WARRANTIES

14.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the fee owner of the Project Site, with the right and authority to enter into this

Agreement. Developer is a Delaware limited liability company, duly organized and validly existing and in good standing under the Laws of the State of California. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer represents and warrants that there is no Mortgage, existing lien or encumbrance recorded against the Project Site that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the Mortgage, lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

14.2 No Inability to Perform; Valid Execution. Developer represents and warrants that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

14.3 Conflict of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

14.4 Notification of Limitations on Contributions. By executing this Agreement, Developer acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a

contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Developer certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

14.5 Other Documents. To the current, actual knowledge of _____ and _____, after reasonable inquiry, no document furnished by Developer to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

14.6 No Bankruptcy. Developer represents and warrants to the City that

Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

15. MISCELLANEOUS PROVISIONS

15.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements between the Parties specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

15.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

15.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to the provisions of this Agreement, including without limitation Section 13, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the

provisions of this Agreement, including without limitation Section 13, all provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

15.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the Laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

15.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

15.6 Project Is a Private Undertaking; No Joint Venture or Partnership. The development proposed to be undertaken by Developer on the Project Site is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

15.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by Developer.

15.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

15.9 Survival. Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provision which, by its express terms, survive the expiration or termination of this Agreement.

15.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

15.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other or additional person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance, Flower Mart Project

To Developer:

Kilroy Realty Corporation
100 First Street, Suite 250
San Francisco, CA 94105
Attn: Regional Vice President, SF

with a copy to:

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

Attn: Daniel Frattin or Tuija Catalano

15.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

15.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

15.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

15.15 Tropical Hardwood and Virgin Redwood. The City 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.

15.16 Sunshine. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

15.17 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to Developer, its successors and assigns, in the event of any Default by City, or for any amount, which may become due to Developer, its successors and assigns, under this Agreement.

15.18 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved on _____, 2019
Board of Supervisors Ordinance No. _____

Approved as to form:

DENNIS J. HERRERA, City Attorney

By:

Charles Sullivan
Deputy City Attorney

APPROVED AND AGREED:

By: _____
Naomi Kelly, City Administrator

DEVELOPER:

KR FLOWER MART LLC, a Delaware limited liability company

By: Kilroy Realty, L.P,
a Delaware limited partnership,
its Sole Member

By: Kilroy Realty Corporation,
a Maryland corporation,
its General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____

Title: _____

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco ("**SFMTA**") has reviewed the Development Agreement (the "**Development Agreement**") between the City and KR Flower Mart LLC, a Delaware limited liability company ("**Developer**") to which this Consent to Development Agreement (this "**SFMTA Consent**") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA CPE and Addendum, including the MMRP, consented to and agrees to be bound by the Development Agreement as it relates to matters under the SFMTA's jurisdiction, including the Transportation Demand Management Program.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
Edward D. Reiskin, Director of Transportation

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

By: _____
Charles Sullivan, Deputy City Attorney

San Francisco Municipal Transportation Agency Board of Directors
Resolution No. _____
Adopted: _____, 2019

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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 San Francisco)

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

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WITNESS my hand and official seal.

Signature

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State of California)
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

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 San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____

Development Agreement

The Flower Mart Project

San Francisco Board of Supervisors

December 9, 2019

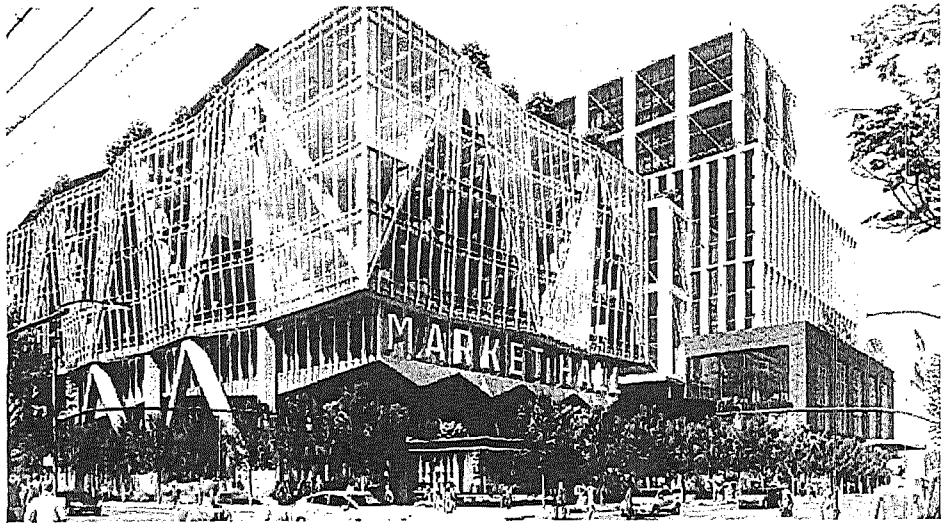
SAN FRANCISCO
Office of Economic and Workforce Development

Key Components

- The need for two scenarios in the DA.
- The requirements for Kilroy to construct a new permanent facility and relocate the Flower Mart in Scenario B
- Community Benefits and Development Impact Fees
- Establishing future priority Prop M allocation in 2021

FLOWER MART AKA. 610-690 BRANNAN STREET

- Office Use: 2,032,165 gsf
- Other Uses:
  - PDR/Flower Mart - 115,000 gsf
  - Retail – 83,459 gsf
- Community Benefits:
  - Open Space (145,000 gsf, including 35,450 gsf POPOS; 8,125 gsf in Market Hall; 5,193 gsf Off-Site)
  - Retention & Significant Upgrade of San Francisco Flower Mart
  - Enhanced Workforce Program
  - Affordable Housing Land Dedication (14,000 sf) for Gateway Building
  - Below Market Rate PDR



  - Child Care (Fee or On-Site of 10,185 gsf or Combo)
  - LEED Platinum

San Francisco Planning

Why do we need two scenarios?

- Increased density along with proposed road diet could result in challenges for vehicle intensive reality of operating a major wholesale flower distribution business.
- The Flower mart is made up of over 50 independent, mostly family owned small business owners who in turn accommodate 4,000 small and large businesses across all of northern California on a weekly basis.
- Rely on easy circulation and adjacent access to the mart's warehouse.

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FlowerMart Development Agreement - Scenario A

Flower Vendors Elect to Return to Fifth and Brannan

- **115,000 square feet of on-site affordable PDR space**
- **100,000 square feet of on-site neighborhood serving retail**
- **15,000 square foot land dedication for 100% Affordable housing**
- **36,000 square feet on-site privately owned public open space**
- **5,000 square feet off-site public open space**
- **Enhanced workforce and job training for both PDR & Office**
- **500 bike parking spaces**
- **$5million contribution to Sunnydale Hub project**
- **$2million contribution to CSOMA safer & cleaner streets**
- **$300,000 contribution toward Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District**
- **$4million in public art (in addition to 1% art's fee)**
- **$210 million in impact fees including $107 million in jobs housing linkage fees, which will result in the construction of nearly 500 units of permanently affordable housing.**

SAN FRANCISCO
Office of Economic and Workforce Development

Scenario B
FlowerMart Election

Scenario B is triggered if the Flowermart elects not to return to Brannan Street. The flower vendors will have 30 days after DA is fully executed to make the election to stay or move.

SAN FRANCISCO
Office of Economic and Workforce Development

FlowerMart Development Agreement - Scenario B

Flower Vendors Elect Alternative Permanent Location

- 115,000 square feet of off-site affordable PDR space
- 100,000 square feet of on-site neighborhood serving retail
- 15,000 square foot land dedication for 100% Affordable housing
- 36,000 square feet on-site privately owned public open space
- 5,000 square feet off-site public open space
- Enhanced workforce and job training for both PDR & Office
- 500 bike parking spaces
- $5million contribution to the Sunnydale Hub project
- $2million contribution to CSOMA safe and clean streets
- $300,000 contribution toward Cultural District Fund for SOMA Pilipinas Filipino Cultural Heritage District
- $4million public art (in addition to 1% art's fee)
- $210 million in impact fees including $107 million in jobs housing linkage fees, resulting in nearly 500 units of permanently affordable housing.
- PLUS: 23,000 square foot on-site affordable childcare facility
- 1,000 square foot on-site community space
- On-site programming for neighborhood organizations, including job fairs, floral shows, farmer's market and other community programs

Thank you

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SAN FRANCISCO
Office of Economic and Workforce Development

SAN FRANCISCO FLOWER MART

BOARD OF SUPERVISORS
LAND USE AND TRANSPORTATION COMMITTEE HEARING

DECEMBER 9, 2019

San Francisco Flower Mart Project

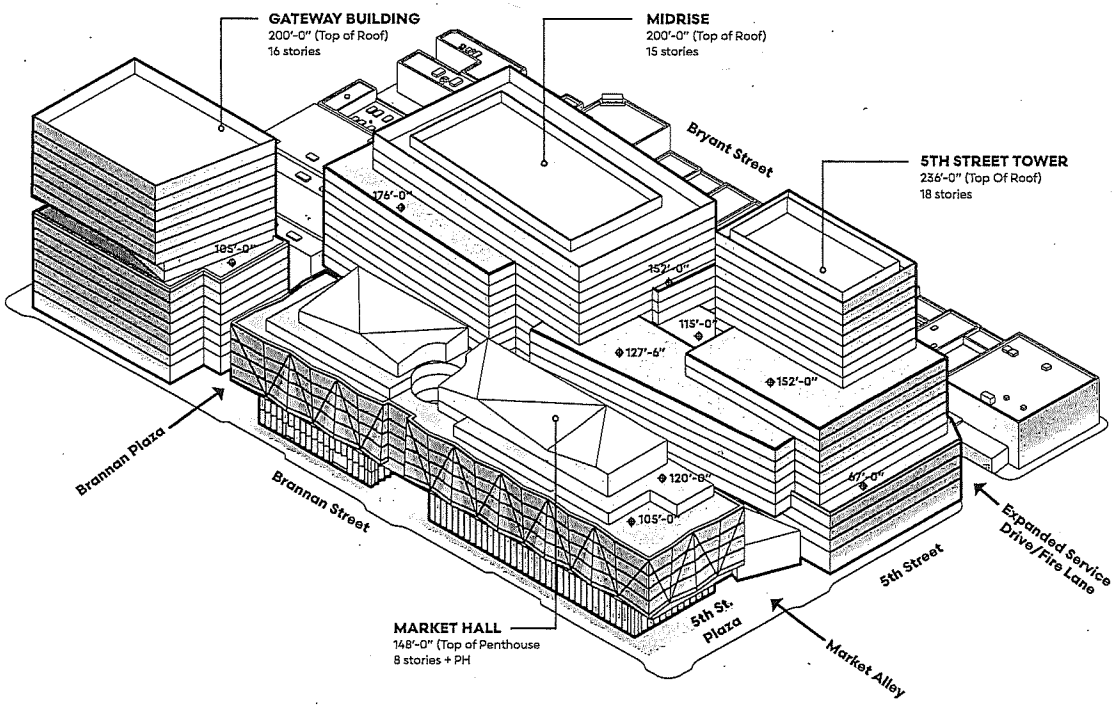
PROJECT DESCRIPTION

PARCEL	BLOCK 3778 LOT 1B, 2B, 4, 5, 47, 48
LOT AREA	286,368 SF 6.57 acres
EXISTING USES	Wholesale Flower Market + Surface Parking
	Lot 47 (Vacant) 27,088 sf
PROPOSED USE	Wholesale Flower Market, Retail, Office, & Underground Garage Parking
USE DISTRICT	CMUO / MUR
SPECIAL USE DISTRICTS	Central SOMA
HEIGHT / BULK	270-CS / 160-CS
OCCUPANCIES	A-2 Restaurant + Bar, A-3 Terraces, A-5 Bleacher, B Office, M Market + Retail
CONSTRUCTION TYPE	Type 1A, Fully sprinklered All new construction

The project site is located in San Francisco's South of Market (SoMa) District on Assessor's Block 3778, which is bounded by Fifth Street to the north, Brannan Street to the east, Sixth Street to the south, and Bryant Street to the west, and within the recently adopted Central SoMa Special Use District.

The San Francisco Flower Mart Project ("Project") would include the demolition of all the existing buildings on the project site, including the Existing Wholesale Flower Market, the surface parking lot, and additional vacant buildings. The Project would include three new buildings (the Market Hall Building, the Blocks Building, and the Gateway Building) containing 2,032,165 gross square feet of office space, 83,460 gross square feet of retail space (including 10,000 rentable square feet of flower retail space), and a new wholesale flower market consisting of 115,000 rentable square feet of flower vendor space plus adjacent at-grade and below-grade loading areas ("New Wholesale Flower Market"). The Market Hall Building would front Brannan Street and be approximately 148 feet tall. The Blocks Building would be north of the Market Hall Building and range from approximately 200 to 236 feet in height. The Gateway Building would rise to 200 feet on the corner of Sixth and Brannan streets.

The Project would also include 145,000 square feet of public and private open space. Of this, 31,450 square feet of POPOS is to be provided at street level, including 8,125 square feet under the Market Hall Building's cantilevered ends. An additional 5,200 square feet will be provided off site. The remaining open space would includ 36,000 square feet of living roof and multip tenant terraces.



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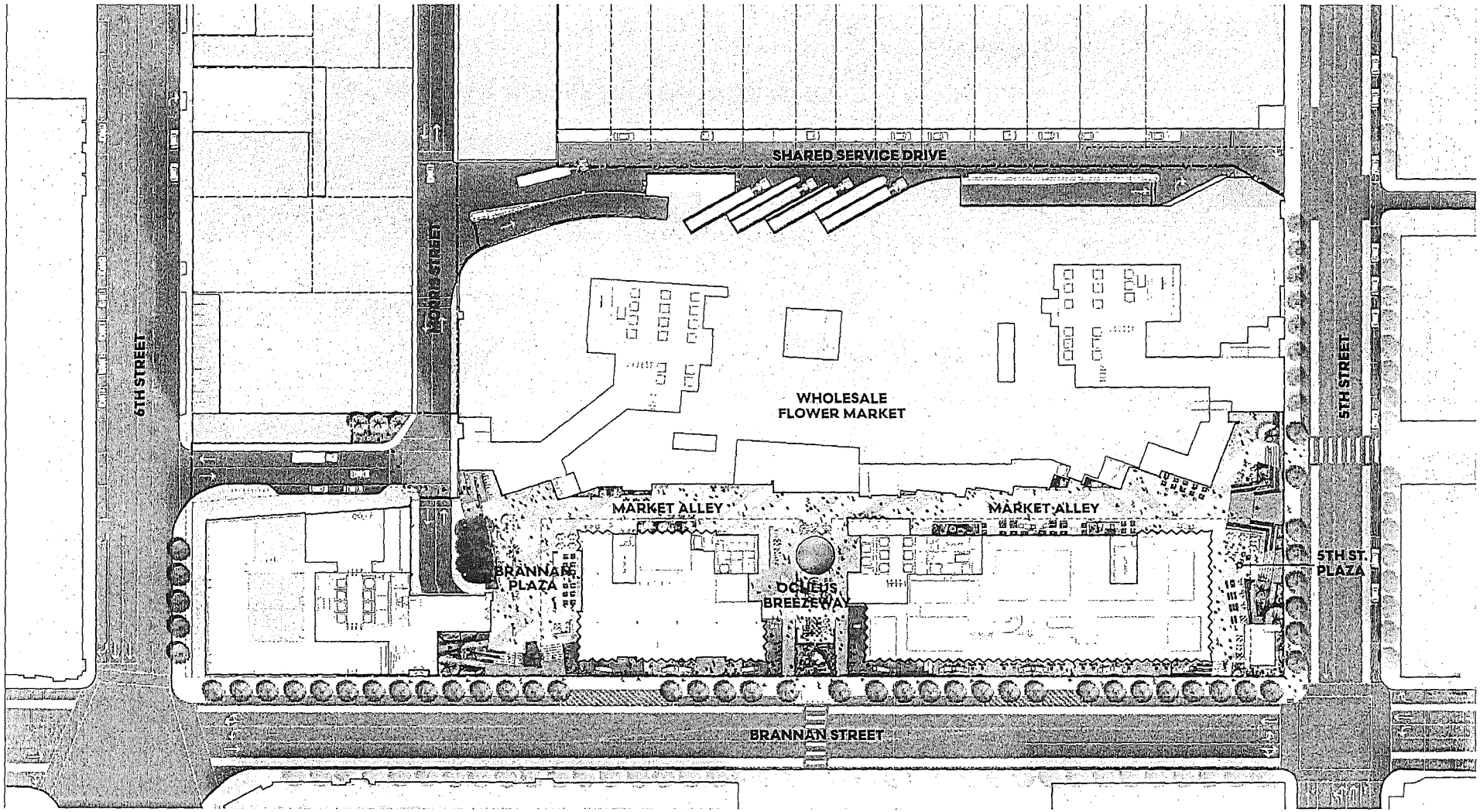
adamson ASSOCIATES · ARCHITECTS RCH STUDIOS



ILLUSTRATED SITE PLAN

Scale: 1" = 80'-0"

North

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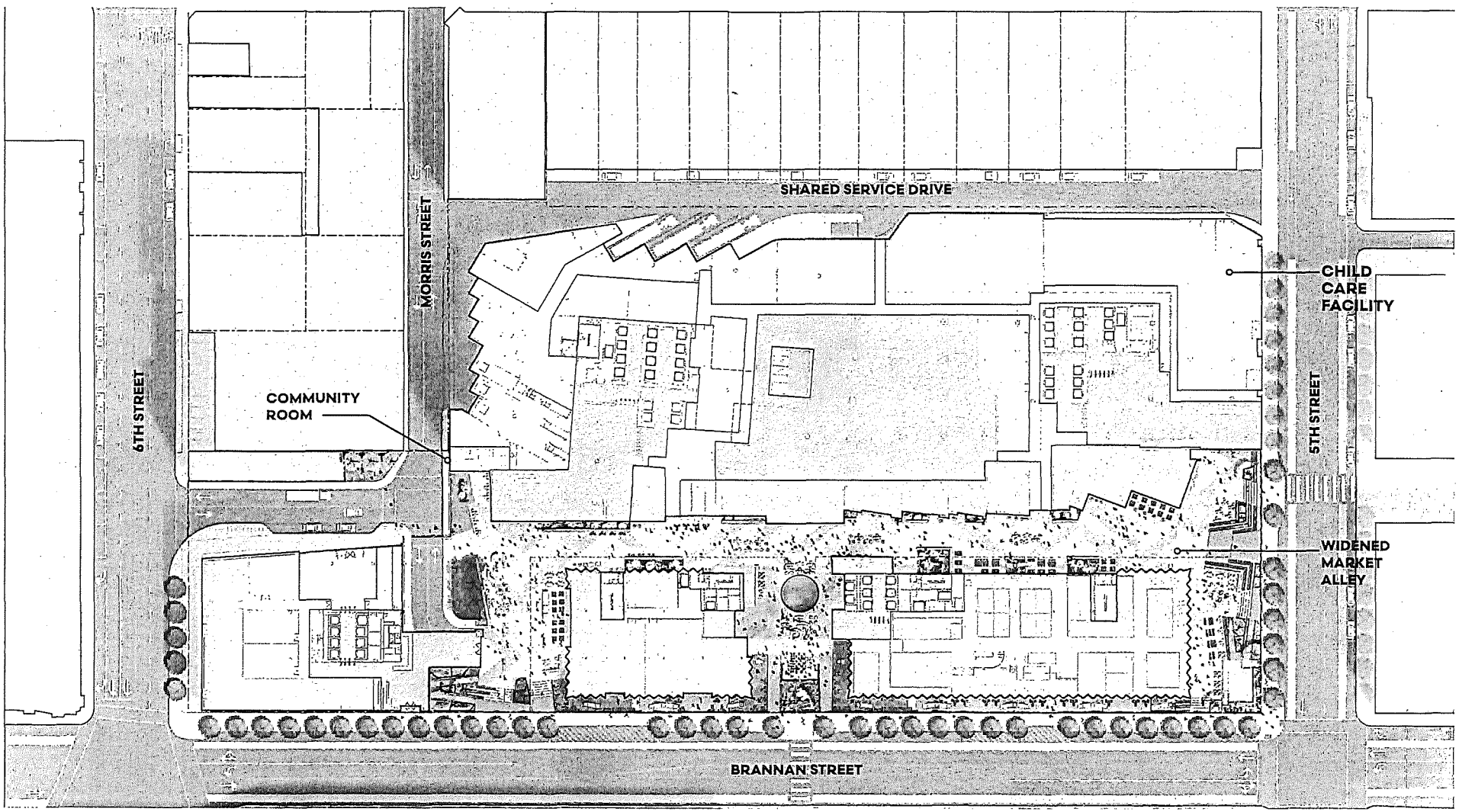

PROJECT VARIANT - PROJECT WITHOUT WHOLESALE FLOWER MART

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San Francisco Flower Mart

Fiscal & Economic Benefits

$39.2 million in direct annual tax revenue for the City/County of San Francisco, incl.:

- » **$29.9 million** annual revenue for the General Fund
- » **$9.3 million** annual revenue for non-General Fund uses

$231.2 million in direct, one-time construction-related revenue for the City, incl.:

- » **$222 million** in fees, incl. **$110M** for affordable housing and **$49M** for transportation
- » **$9.2 million** in gross receipts and sales tax revenue

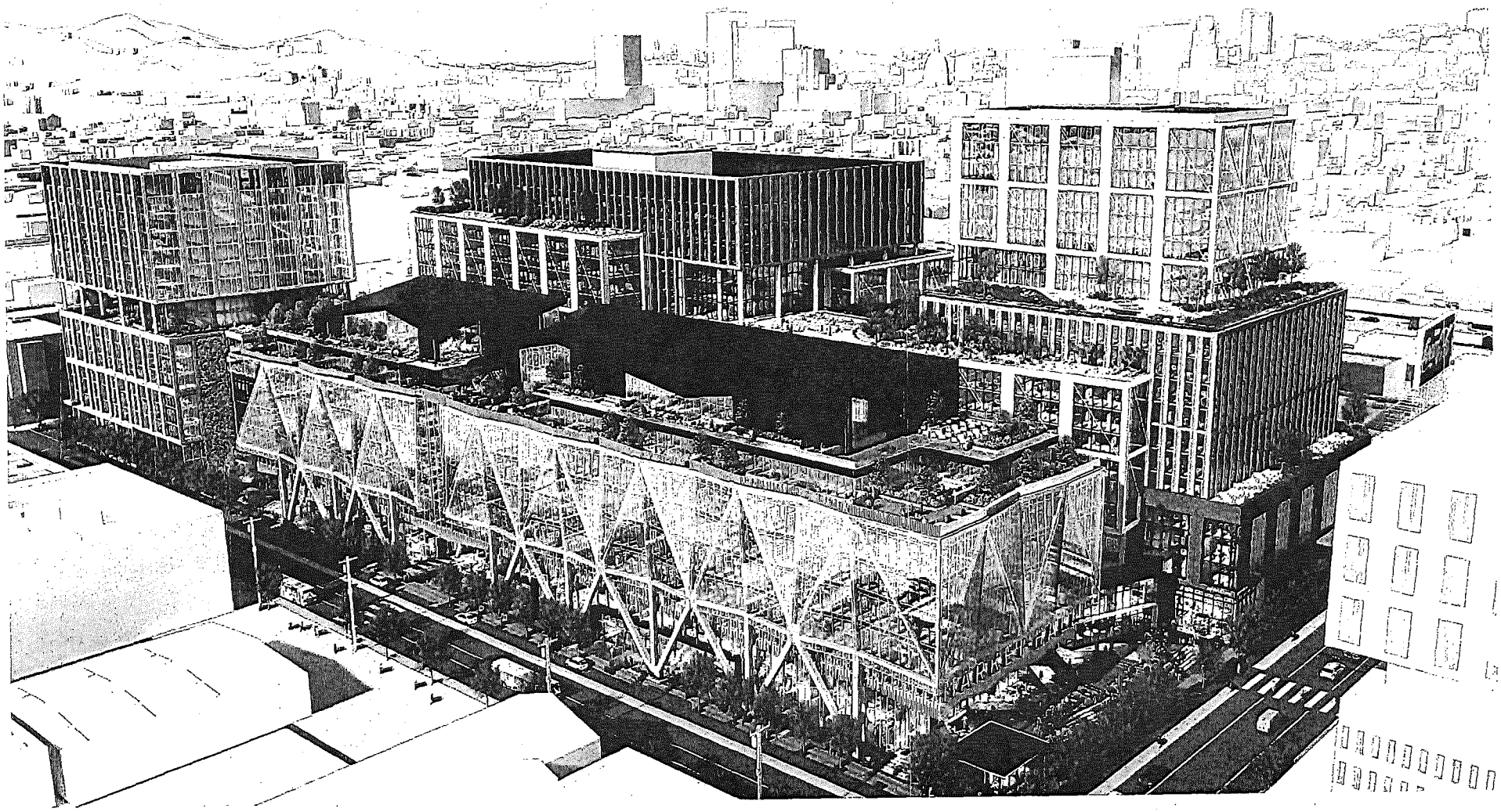
$20 million construction of new wholesale flower market

8,050 annual construction-related jobs, with economic output totaling **$1.5 billion** during construction period (2020-2023)

KILROY

Public Benefits

- **$100 million** for **115,000 SF** affordable PDR (includes interim market)
- **$50 million** for **100,000 SF** neighborhood-serving retail & market hall
- **$8 million** for **14,000 SF** off-site land dedication to the City for 100% affordable housing (up to 100+ units)
- **$5 million** donation to the Sunnydale Community Center Project
- **$2 million** donation to support the SoMa street cleaning initiative
- **$5 million** for **22,000 SF** child care center (or in-lieu fee)
- **$500 million** through **enhanced workforce program**
  - » Local Business Enterprise Utilization Program
  - » Permanent workforce program for local residents
- **$20 million** for privately-owned public open space
  - » **Programming of 36,000 SF on-site,** incl. artisan/farmers markets, floral shows, job fairs
  - » **5,000 SF** off-site neighborhood public open space
- **$1 million** for **1,000 SF** community room for use by neighborhood organizations
- **$5 million** for **500** bike parking spaces and shower/locker facilities and **30** car-share and vanpool spaces
- **$25 million** for **LEED Platinum** cert. and sea level rise safeguards
- **$4 million** in public art
- **$50 million** for enhanced deep foundations to bedrock for public safety during/after earthquakes
- **$7 million** for diverting rain/wastewater from public treatment systems



PROJECT OVERVIEW

KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

190681
& 190682

REUBEN, JUNIUS & ROSE, LLP

December 4, 2019

Delivered Via Email and Messenger

Land Use & Transportation Committee
Chair Aaron Peskin (Aaron.Peskin@sfgov.org)
Supervisor Matt Haney (Matt.Haney@sfgov.org)
Supervisor Ahsha Safai (Ahsha.Safai@sfgov.org)
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, Ca 94102-468

Re: San Francisco Flower Mart Project
Development Agreement & Planning Code Amendments
BOS File Nos. 190682 & 190681

Dear Chair Peskin and Supervisors:

KR Flower Mart, LLC (the "**Project Sponsor**;" also Kilroy Realty Corporation or "**KRC**"), proposes a landmark project that would anchor the west end of Central SoMa with over 2,000,000 square feet of office, over 80,000 square feet of new neighborhood serving retail, and over 35,000 square feet of ground level POPOS. The Project Sponsor has been working with the Wholesale Flower Market vendors (the "**Vendors**") and the City on this Key Site development since early 2015.

Since the beginning of the process, the plan has been to build a new state-of-the-art Wholesale Flower Market as part of the project at 6th and Brannan, where it currently operates. At the end of last year, after working on and solving some additional design concerns, the Vendors told KRC that they appreciated all the work but are worried about the larger changes in the neighborhood. Their concerns are primarily related to how increased traffic will impact their wholesale business, which depends on vendors and customers having easy truck and vehicle access to the market. Over the past year, KRC has been working with the Vendors and the City to develop a 2-variant plan, which provides for projects with and without an on-site Wholesale Flower Market.

The 2-variant plan was approved by the Planning Commission on July 28, 2019, and allows the Wholesale Flower Market Vendors to decide whether to return to the current site at 6th and Brannan, or whether to relocate to a new permanent location elsewhere. Per the most recent discussions with the Vendors, if the Vendors choose to stay, KRC will build a new market on site. If they choose to move to an alternate site, KRC will construct a new market at an alternative site. The mechanics of this 2-variant plan are detailed in the Development Agreement before you today, which is designed to ensure that the Wholesale Flower Market has a new permanent home in San

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Francisco with guaranteed affordable rent. The related Planning Code and Zoning Map amendments further facilitate the construction of the Project at 6th and Brannan, as well as the potential construction of an interim Wholesale Flower Market at 2000 Marin Street.

A. Project and Project Variant Descriptions

The property at 610-698 Brannan Street consists of Assessor's Block 3778, Lots 1B, 2B, 4, 5, 47 and 48. These lots comprise the 286,368 square foot (6.57 acres) lot (the "**Property**" or "**Project Site**") bounded by Fifth Street to the north, Brannan Street to the east, Sixth Street to the south, and Bryant Street to the west, and is identified as a Key Site under the Central SoMa Plan (also the "**Plan**").

The Project Sponsor proposes to construct three new buildings at the Property (the Blocks, Market Hall, and Gateway Buildings), consisting of 2,032,165 square feet of office space, 83,459 square feet of retail space, and a new Wholesale Flower Market (the "**Project**"). The Project will also include 35,450 square feet of ground level on-site POPOS, including a new mid-block pedestrian alley linking 5th and 6th Streets. An additional 5,193 square feet of POPOS will be provided off site, either under or adjacent to the I-80 freeway.

The variant to the proposed Project—which would be constructed only if the Wholesale Flower Market vendors opt not to return to the Project Site—is essentially the same, but would involve reconfiguring the ground floor of the Blocks building to replace the Wholesale Flower Market with a 22,690 square foot childcare facility, a 950 square foot community room, and additional office and retail space (the "**Project Variant**"). The Project Variant would also include an additional 3,000 square feet of onsite POPOS.

B. Community Benefits

Both the Project and Project Variant would provide substantial public benefits, as outlined below and as guaranteed by the City's Code requirements and the Development Agreement:

1. **Construction of a new Wholesale Flower Market.** If the Vendors opt to return to 6th and Brannan, then the Project will include a new, modern, and efficient Wholesale Flower Market with sufficient loading and parking, at below market rates, as set forth in part in the Development Agreement and in the Tri-Party Agreement between the Vendors, San Francisco Flower Mart LLC ("**SFFM**," the master tenant), and KRC and the Post-Development Lease between SFFM and KRC. If the Vendors decide to relocate, then the Project Sponsor will construct a permanent off-site facility at an alternative permanent site for the Vendors. In both cases, the Project would ensure the continued operation of the Wholesale Flower Market within San Francisco—keeping this 100+ year old institution and its 275 PDR jobs alive in the City. The Project Sponsor will relocate the Vendors to an interim site for the duration of the construction of the permanent site, and in the event the Vendors choose not to come back to 6th and Brannan, the Project Sponsor may also skip the temporary relocation and instead locate the Vendors directly to the permanent off-site facility.

2. **Affordable housing site.** The Project Sponsor will purchase and dedicate a minimum 14,000-square-foot site to the City for the construction of affordable housing in exchange for the Gateway Building being developed as an office project. The dedicated site would be located within the boundaries of the Central SoMa, Eastern SoMa, or Western SoMa Area Plans, and would be dedicated prior to receiving the first certificate of occupancy for the Project.

3. **$5 million donation to Sunnydale Hub Project.** The Project sponsor will donate $5 million to Mercy Housing California, for costs related to the Sunnydale Hub project.

4. **SoMa Pilipinas Cultural District contribution.** The Project Sponsor will fund and construct an arch, monument, pillar or other physical marker along 6th Street, between Brannan and Bryant Streets, which will serve as an identifying gateway to the San Francisco Filipino Cultural Heritage District. The marker would be based on a design to be developed by SoMa Pilipinas, with funding allocated from KRC's Eastern Neighborhoods infrastructure impact fee payments.

5. **On-site child care facility.** In the Project Variant scenario, KRC will construct a 23,000 square foot subsidized child care facility on the ground floor of the Blocks Building along 5th Street. The child care facility will include 8,300 square feet of dedicated, secure, outdoor play space.

6. **Enhanced workforce program.** The Project Sponsor will implement an enhanced workforce program, including working with the Contract Monitoring Division of the City Administrator's Office to implement: (1) a Local Business Enterprise (LBE) Utilization Program for design and construction contracts related to the development of the Project; and (2) a permanent workforce program to provide enhanced opportunities for local residents for employment with the future tenants of the Project.

7. **Payment of over $210,000,000 in development impact fees.** These fees will go to the benefit of city services and affordable housing, including the Transportation Sustainability Fee, the Schools Fee, the Eastern Neighborhoods Infrastructure Impact Fee, the Jobs-Housing Linkage Fee, and the Central SoMa Community Facility Services Fee. The Project or Project Variant will also pay the new Central SoMa Community Facilities District Tax, which will contribute to financing transit investments, street and environmental improvements, and development and maintenance of parks and recreation centers.

8. **Dedication of $4,000,000 to public art.** The Project Sponsor will dedicate the equivalent of 1% of construction costs to public art. Based on an estimated construction cost of $400,000,000, the Project/Project Variant would include $4,000,000 public art. The art program has not been finalized but will include a sculptural art piece located near the center of Brannan Plaza that will also serve as a children's play structure.

9. On-site community room. In the Project Variant scenario, the ground floor of the Blocks Building would include an approximately 1,000 square foot community room, (located on Morris Street behind the Brannan Street lobby of the Blocks Building), available for SoMa community groups at low rates. The community room also includes a small amount of office space, which would be made available for use by SoMa Pilipinas.

10. Addition of up to 38,450 sf of on-site at grade POPOS. New POPOS at the Property will include an active mid-block Market Alley which will create a pedestrian connection between 5th and 6th Streets. The Market Alley will be linked to Brannan Street via two POPOS plazas—the 5th Street Plaza on the east end of the Market Hall and the Brannan Plaza on the west end of the Market Hall. The plazas will feature drinking fountains, access to public restrooms within the Market Hall, and moveable furniture. The large flexible spaces are designed to accommodate programming including farmers markets, concerts, and the SoMa Pilipinas Night Market. In addition to the on-site POPOS, 2,778-5,193 square feet of off-site POPOS would be provided as public recreation space under or adjacent to the I-80 freeway.

11. Addition of up to 90,976 square feet of new retail. The Project will provide 83,459-90,976 square feet of new street-level retail space, including 10,000 square feet dedicated to the Flower Market, if the Vendors opt to return to the Project Site. The retail would also include a Market Hall at the corner of 5th and Brannan Streets that will provide space for up to 20 micro-retailers. Up to two of those retail stalls (300-500 square feet each) would be set aside for retail and entrepreneurship training opportunities for local community groups.

12. $14 million in streetscape improvements & public infrastructure. With frontages on Brannan, 5th, and 6th Streets, the Project or Project Variant will provide for substantial streetscape improvements on the block. These improvements will include traffic signals, transit stop improvements, crosswalks and pedestrian safety treatments, improved parking and loading zones, and other streetscape improvements including enhanced lighting, stormwater treatment features, street trees and plantings, and street furniture including new bike parking racks.

13. Green building measures. The Project will provide a number of green building features. It will meet LEED Platinum building standards and provide living roofs throughout the project with plant life that will support pollinators. The Project will also take advantage of the considerable number of living roofs and terraces to develop an integrated stormwater management and treatment system. Various energy saving measures are being planned and studied, including solar ready roofs, expansion capacity for electric vehicle charging stations, and high efficiency MEP systems. Finally, the design team is studying sustainable material options and strategies for reducing the impact of the use of materials on the project and improving indoor air quality.

14. Robust TDM program. TDM measures incorporated into the Project or Project Variant will include the addition of up to 410 Class 1 and 86 Class 2 bike parking spaces and for the Project Variant, up to 516 Class 1 spaces (at 125% the Code requirement) and 92 Class 2 spaces. The Project or Project Variant will include up to 18 showers and 103 clothes lockers, an

on-site bike repair station, up to 15 car share spaces and 12 vanpool spaces, tailored transportation marketing services, and the provision of delivery supportive amenities and delivery services.

15. Annual $200,000 street cleaning support. As part of the Project or Project Variant, KRC will contribute $200,000 a year for 10 years (for a total of $2 million) to support street cleaning efforts in SoMa.

C. Flower Market Optionality & Development Agreement

1. 2015 Tri-Party Agreement

On June 26, 2015, KRC entered into a Tri-Party Agreement (the "**TPA**") with the San Francisco Flower Mart Tenants Association (the "**Tenants**") and San Francisco Flower Mart LLC. The TPA requires that KRC entitle and construct a 125,000-square-foot new Wholesale Flower Market (including 10,000 square feet of accessory retail) at the Property, and relocate the existing Tenants to an interim location (the "**Interim Site**" or "**Temporary Site**") prior to commencing construction on the new Wholesale Flower Market. The TPA establishes certain construction parameters for both the Interim Wholesale Flower Market and for the permanent new Wholesale Flower Market.

Under the TPA, the Interim Site must be able to accommodate 115,000 gross square feet of wholesale space, or less, so long as the space is sufficient to accommodate all of the existing Tenants. As part of the TPA, the Tenants and the SFFM pre-approved 2000 Marin Street as a potential Interim Site, subject to KRC being able to lease such property in a timely manner.

2. Tenant Design Discussions

Towards the end of 2018, the Vendors raised additional concerns about the design and functionality of the new Wholesale Flower Market. The Project Sponsor incorporated several design changes, which go beyond the requirements of the TPA. These changes include:

- Adding tall van parking spaces and redesigning aspects of the basement to accommodate those spaces;
- Adding a pedestrian/cart entrance to the wholesale space on 5th Street;
- Expanding the at-grade loading dock spaces to accommodate the largest semi-trucks;
- Reducing the size of building service elements in the upper volume of the Wholesale Flower Market space; and
- Providing additional elevators for service between the basement parking levels and the ground floor Wholesale Flower Market space.

In addition to these changes, the Development Agreement incorporates a design requirements that KRC has agreed to include in either an interim Wholesale Flower Market or an alternative off-site market if the Vendors opt to relocate permanently.

3. Off-Site Flower Market Option

Late last year, the vendors asked KRC to consider providing funding for the construction of a new building off-site, in lieu of building a new Wholesale Flower Market on the Project Site. They expressed appreciation for the design changes and the preceding years of work, but many of the Vendors felt that the new Central SoMa neighborhood, where significant new road diets are proposed, along with major office and residential development, will not be accommodating to their wholesale operations, particularly with respect to large truck traffic.

In response to those concerns, KRC developed the Project Variant described above, which does not include a new Wholesale Flower Market at 6th and Brannan. The Planning Commission's approval of a 2-variant project provides optionality for the Vendors to decide which choice is best for their long-term success. If the Vendors choose to stay at the current site, KRC will build a new Wholesale Flower Market at the Property. If they choose to move, the KRC will build a new Wholesale Flower Market at an alternative permanent site. Either way, the Project Sponsor will ensure that the Wholesale Flower Market has a new permanent home in San Francisco at the same guaranteed affordable rents.

No final decision has been made by the Vendors as to whether they wish to stay at the site. This is why it is key to maintain the optionality of both scenarios. The Development Agreement preserves this optionality and establishes the procedure by which the Vendors could opt to permanently relocate, as well as the details for the construction of a permanent off-site facility if the option is exercised to move to an alternative site.

D. Planning Code Text and Zoning Map Amendments

On June 11, 2109, Supervisor Haney introduced an ordinance for Planning Code Text and Map Amendments to establish the 2000 Marin Street Special Use District and to create additional Key Site exceptions for the main Project Site, and amend Special Use District Map No. SU08 for the San Francisco Flower Mart Project.

The 2000 Marin Street SUD would facilitate the construction of an Interim Site for the Wholesale Flower Market at 2000 Marin Street, and would modify the Planning Code requirements for demolition of industrial buildings, streetscape improvements, building standards, vehicle and bicycle parking, transportation demand management and impact fees for a period of six years.

The Planning Code Text Amendments would also create additional Key Site exceptions for the Project Site. These amendments would modify the requirements for POPOS design, off street parking, ground floor transparency and fenestration, protected street frontages, PDR floor heights, overhead obstructions, off-site open space, parking pricing, residential to non-residential ratio, child-care facilities, PDR replacement, PDR and Community Building Space.

E. Outreach & Support

Since 2014, KRC has been meeting with dozens of critical community, citywide, and nonprofit organizations to ensure that those most affected are aware of the Project, when the Project would likely start and finish construction, and how the Project would change and benefit the neighborhood and the rest of SoMa. Key organizations that were updated on the Project include the SoMa Leadership Council, SoMa Pilipinas, TODCO, United Playaz, the Yerba Buena CBD, Yerba Buena Alliance, Rincon Hill Neighborhood Association, the South Beach Rincon Mission Bay Neighborhood Association, SF Bicycle Coalition, Walk SF, Livable City, SFHAC, YIMBY Action, and more. These conversations ranged from formal presentations to general membership to more intimate conversations with organizational leadership.

Over the past five years, KRC has provided these organizations with update emails as key elements of the Project evolved, and regularly offered update presentations and meetings to make sure all questions relating to the Project were answered. In addition, Kilroy has had several meetings with adjoining property owners, neighboring businesses, and Homeowners Associations to discuss construction planning and the project as a whole.

F. Conclusion

Since 2015, the Project Sponsor has been working with the City and the Wholesale Flower Market Vendors to develop this landmark Project that would anchor the west end of Central SoMa with office, over 80,000 square feet of retail, and over 35,000 square feet of ground level POPOS. The Project will include either a new state-of-the-art Wholesale Flower Market on site, provided at affordable rents; or, if the Vendors decide not to return to the current location, the Project Sponsor will construct a new Wholesale Flower Market at an alternative permanent location.

In addition to the new Wholesale Flower Market, the Project (or Project Variant) will provide an unparalleled public benefits package including: $39.2 million in direct annual tax revenue, at least $210 million in development impact fees, 8,050 annual construction related jobs during the construction period, dedication of an at least 14,000 square foot site for affordable housing, $5 million in funding for the Sunnydale Hub project, a 22,690 square foot child care center (or payment of the in lieu fee), an enhanced workforce program, $4 million dedicated to public art, and LEED Platinum certification.

Accordingly, we ask that you enable the Project Sponsor to provide this sweeping public benefits package and recommend that the Board of Supervisors approve the Development Agreement and the proposed Planning Code Amendments.

If you have any questions, please do not hesitate to call me at 415-567-9000.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP

Tuija Catalano

cc: Erica Major, Land Use and Transportation Committee Clerk (erica.major@sfgov.org)
Anne Taupier, OEWD (anne.taupier@sfgov.org)
Ken Rich, OEWD (ken.rich@sfgov.org)
John Rahaim, Planning Director
Mike Grisso, Project Sponsor
Alexandra Stoelzle, Project Sponsor
Daniel Frattin, RJR

SAN FRANCISCO FLOWER MART

BOARD OF SUPERVISORS
LAND USE AND TRANSPORTATION COMMITTEE HEARING

DECEMBER 9, 2019

San Francisco Flower Mart Project

PROJECT DESCRIPTION

PARCEL	BLOCK 3778 LOT 1B, 2B, 4, 5, 47, 48
LOT AREA	286,368 SF 6.57 acres
EXISTING USES	Wholesale Flower Market + Surface Parking
	Lot 47 (Vacant) 27,088 sf
PROPOSED USE	Wholesale Flower Market, Retail, Office, & Underground Garage Parking
USE DISTRICT	CMUO / MUR
SPECIAL USE DISTRICTS	Central SOMA
HEIGHT / BULK	270-CS / 160-CS
OCCUPANCIES	A-2 Restaurant + Bar, A-3 Terraces, A-5 Bleacher, B Office, M Market + Retail
CONSTRUCTION TYPE	Type 1A, Fully sprinklered All new construction

The project site is located in San Francisco's South of Market (SoMa) District on Assessor's Block 3778, which is bounded by Fifth Street to the north, Brannan Street to the east, Sixth Street to the south, and Bryant Street to the west, and within the recently adopted Central SoMa Special Use District.

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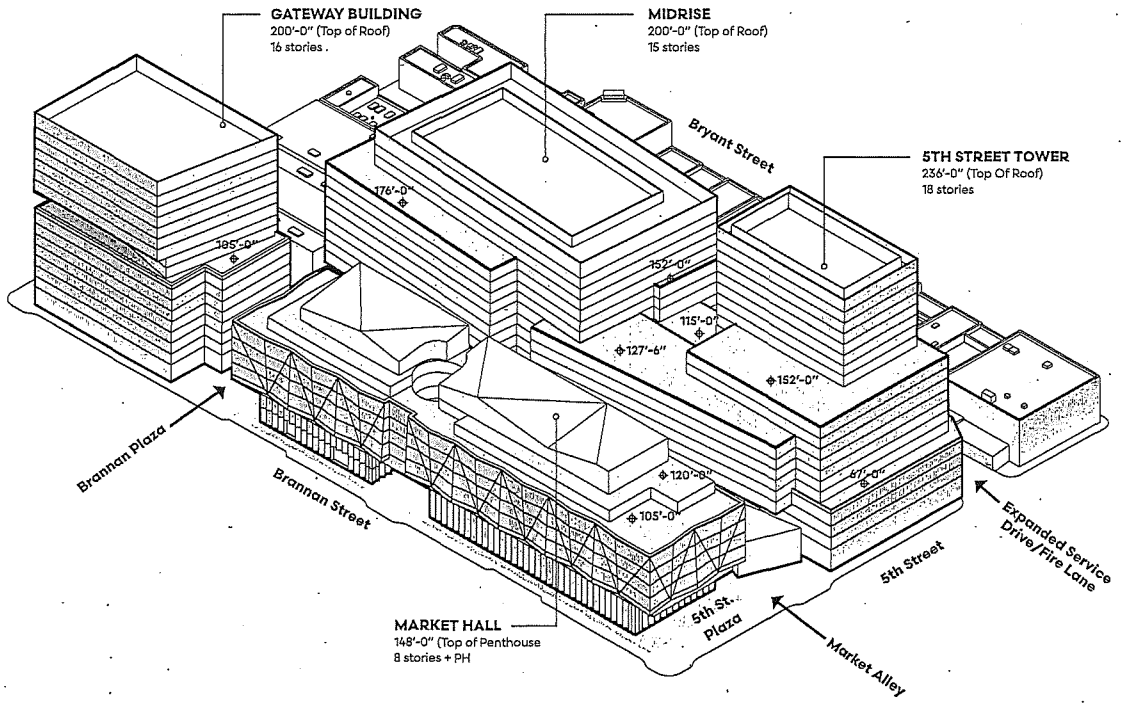
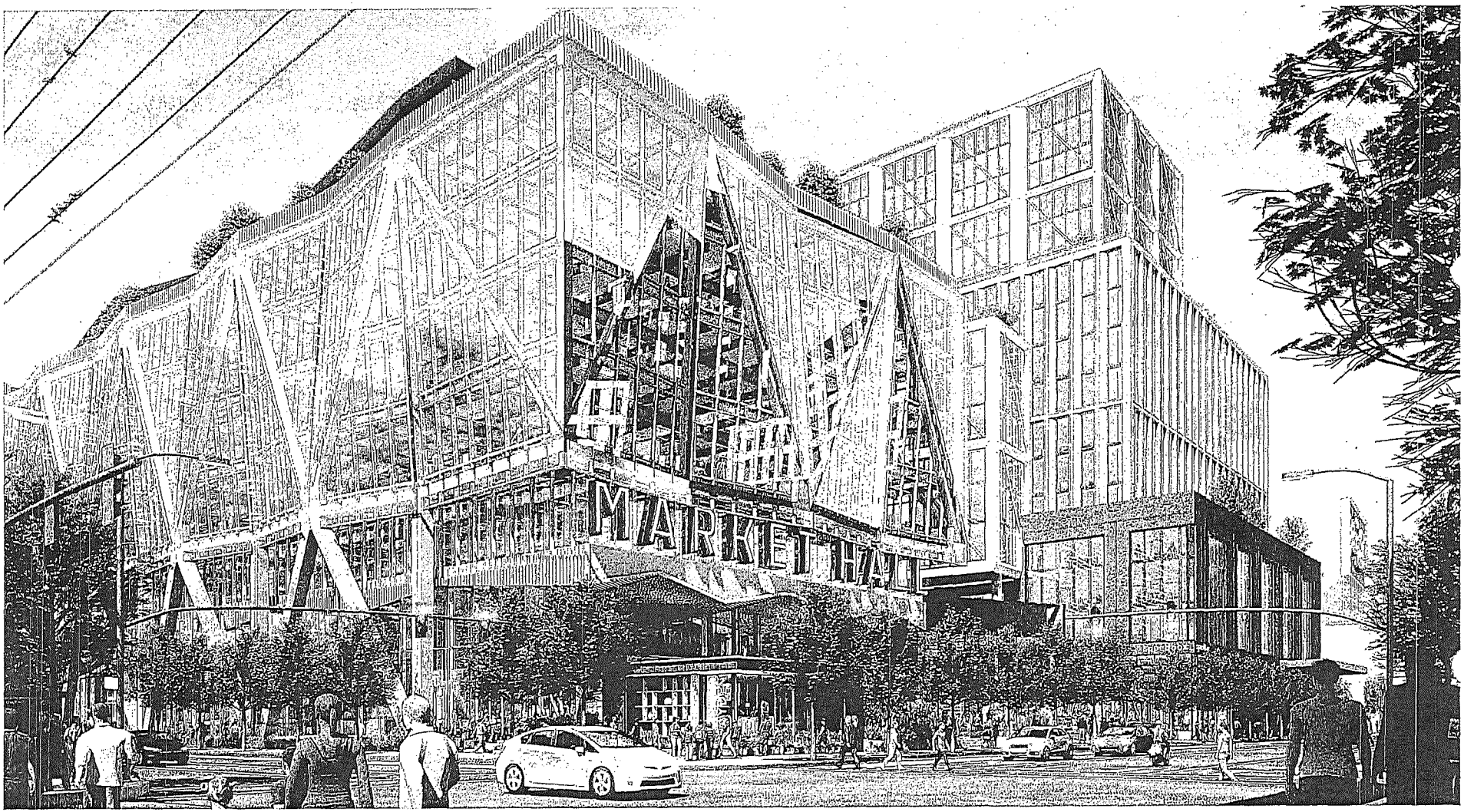
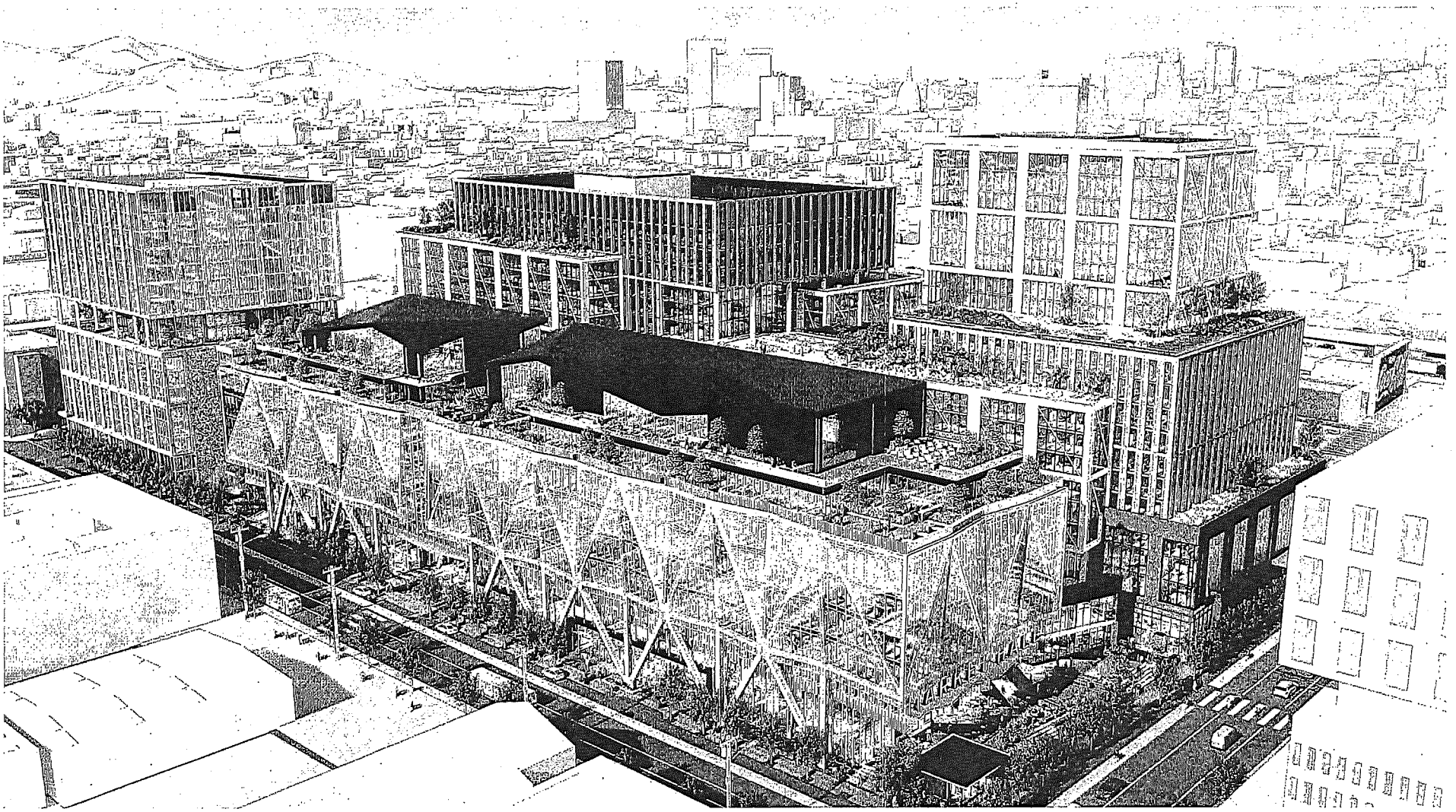
The Project would also include 145,000 square feet of public and private open space. Of this, 31,450 square feet of POPOS is to be provided at street level, including 8,125 square feet under the Market Hall Building's cantilevered ends. An additional 5,200 square feet will be provided off site. The remaining open space would include 36,000 square feet of living roof and multiple tenant terraces.





VIEW FROM 5TH AND BRANNAN



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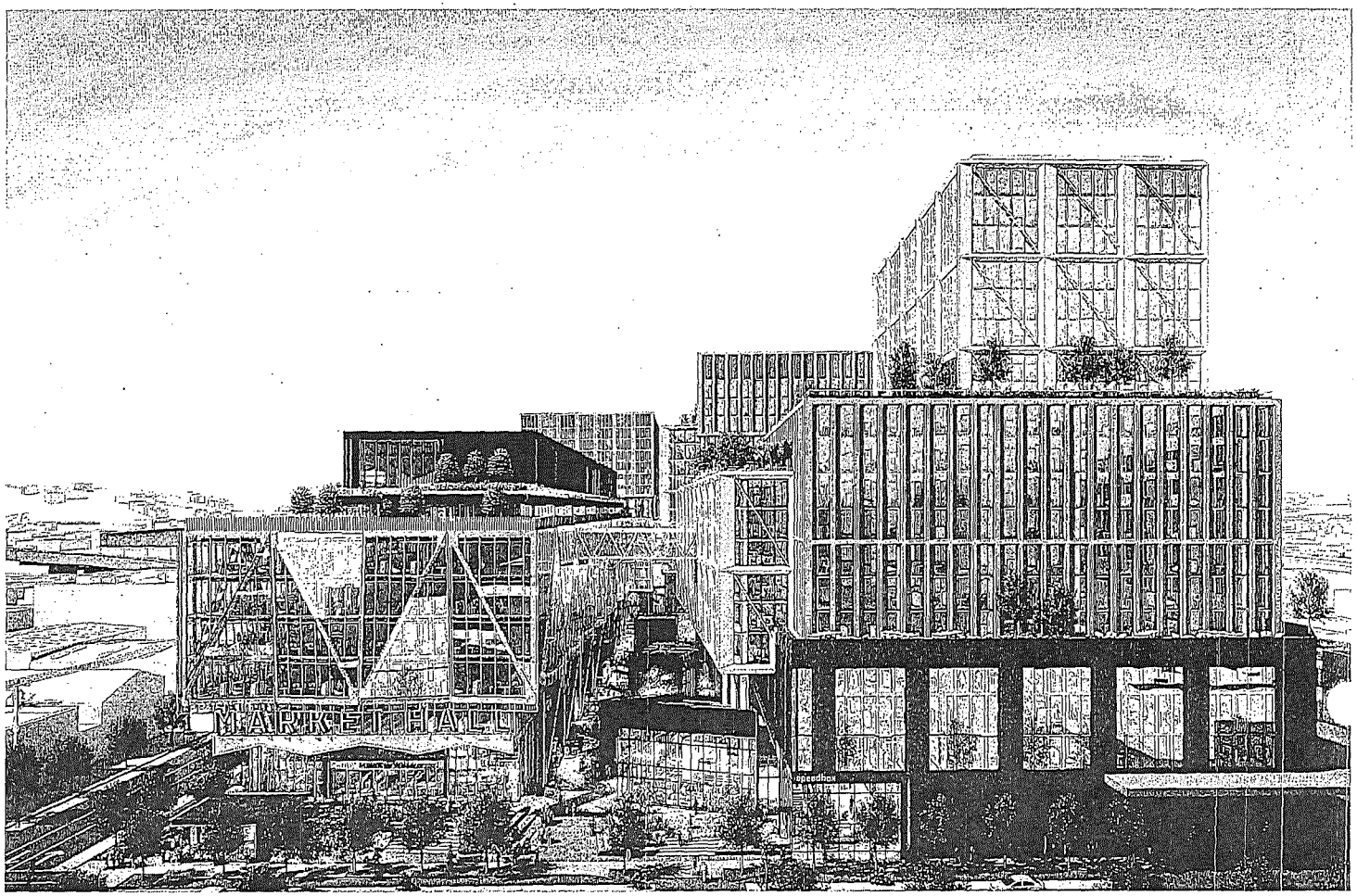
PROJECT OVERVIEW

DESIGN NARRATIVE

The San Francisco Flower Mart Project will include 145,000 square feet of public and private open space. Of this, 31,450 square feet of POPOS is to be provided at street level including 8,125 square feet under the Market Hall Building's cantilevered ends. An additional 5,200 square feet will be provided off site. The remaining open space would include 36,000 square feet of living roof and multiple tenant terraces.

The street level POPOS has been designed as a diverse and activated network of public plazas and passages. The intent is to create a series of distinct places throughout the site while relating it to the neighborhood fabric and to the site programs. The paving pattern will operate on two scales: a high-level modified chevron design and a looser and more granular human scale patterning of varying unit paver materials and colored tiles. The paving concept is derived from the patchwork of paving types that make up SoMa's streets, overlaid with a dusting of flower petals so frequently seen scattered around the ground at the current Wholesale Flower Market. Fixed seating and planting areas have been carefully planned to define gathering and seating spaces both within the plazas and along the street frontages, to both engage the urban fabric and create comfortable, easily accessible open spaces within the site. The plazas are flexibly designed to provide for special weekend programming such as farmers markets, concerts, and community events. The project sponsor is working with selected artists and art consultants to plan a robust art program that will be integrated throughout the street level public spaces.

Roof terraces are planned across all three of the Project's buildings. These terraces will include 36,000 sf of living roofs that will double as part of the storm water management system. The remaining terrace spaces will include occupiable roof decks to be fit out by future tenants.

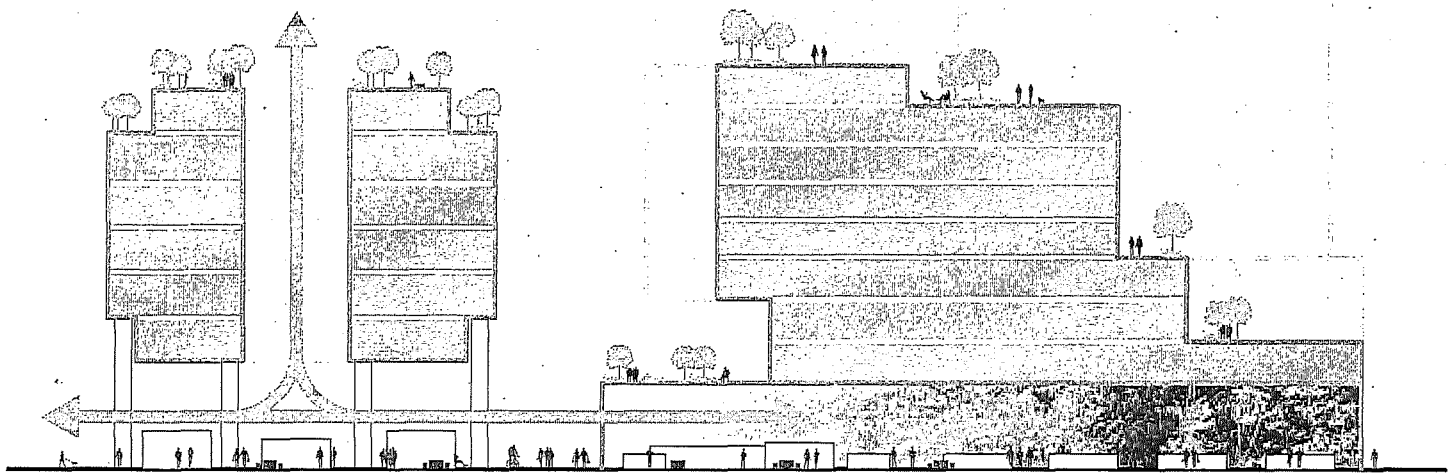


OVERALL RENDERING VIEW & DESIGN NARRATIVE

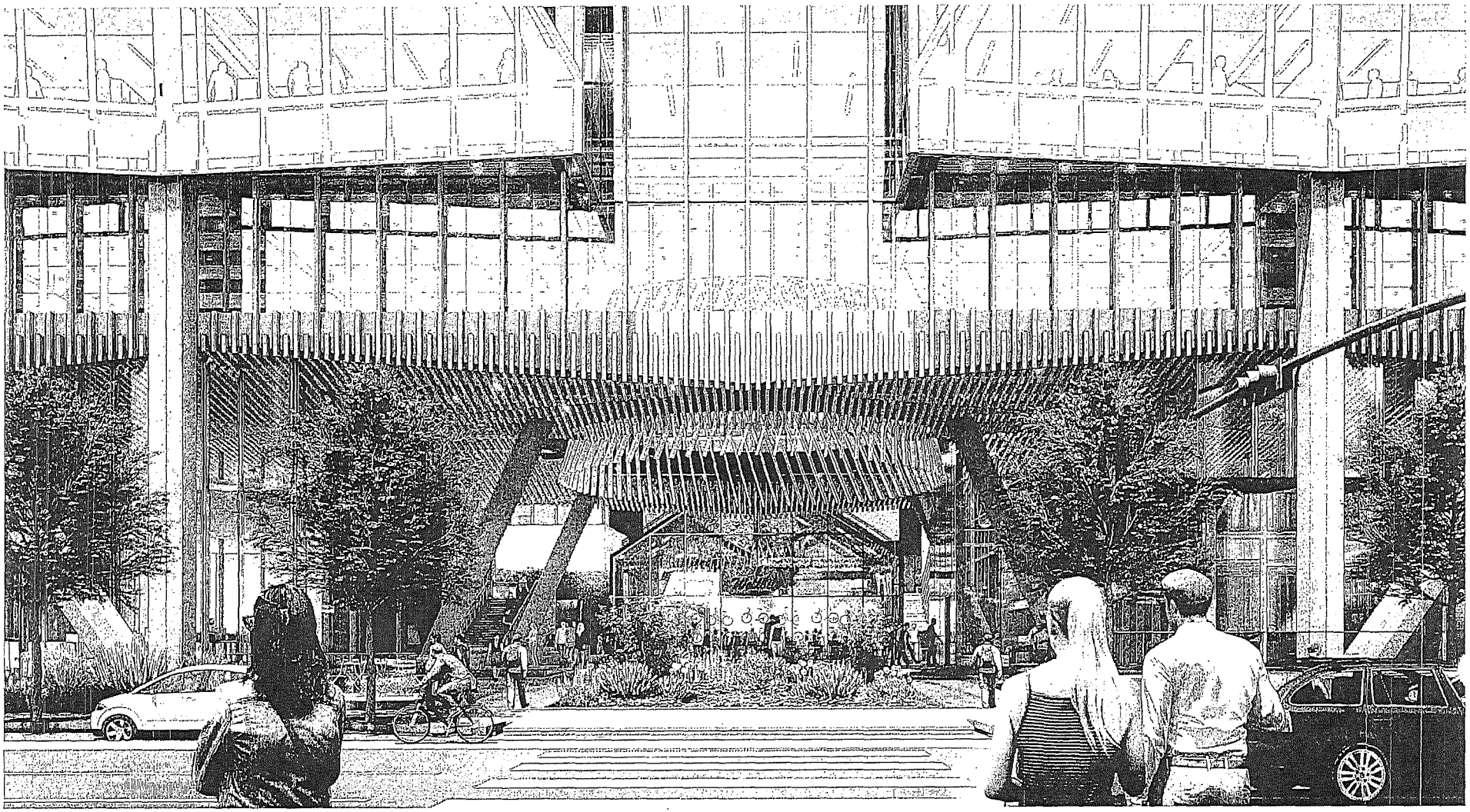
Scale: NOT TO SCALE

KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

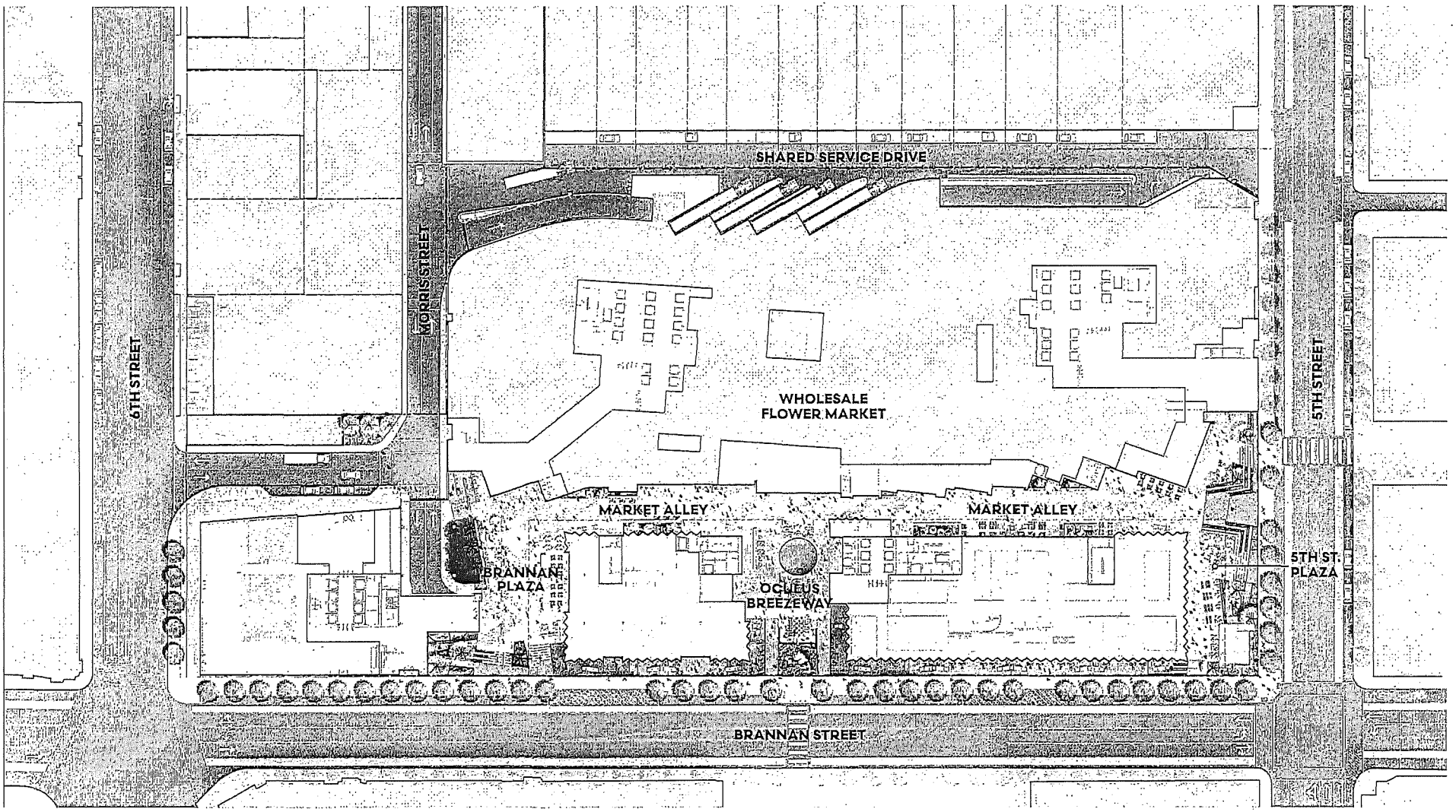


BUILDING STRATEGY DIAGRAM



815

OCULUS BREEZEWAY AT BRANNAN STREET

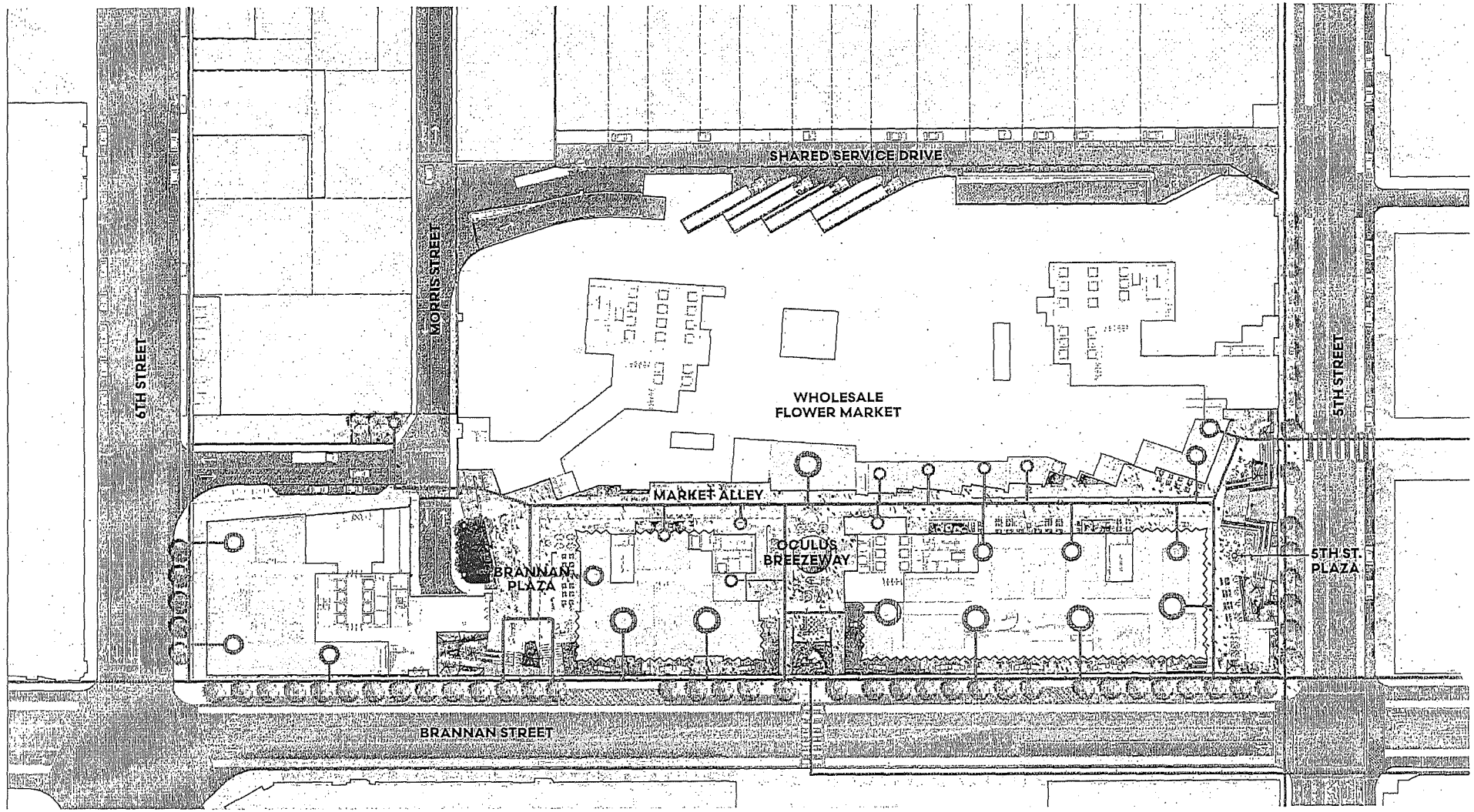


ILLUSTRATED SITE PLAN

Scale: 1" = 80'-0"

North

KILROY



PROGRAM: RETAIL

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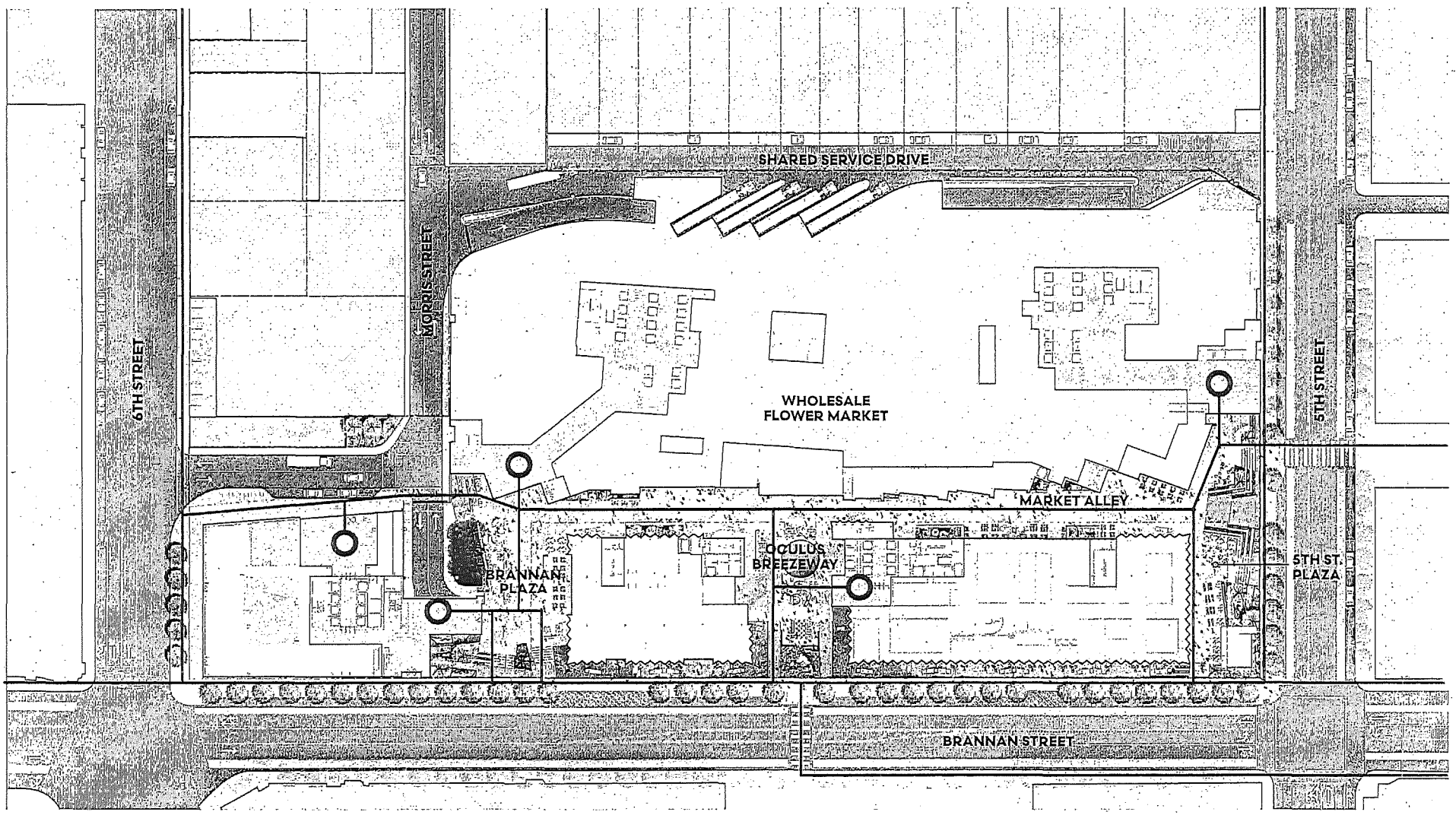
North

KILROY



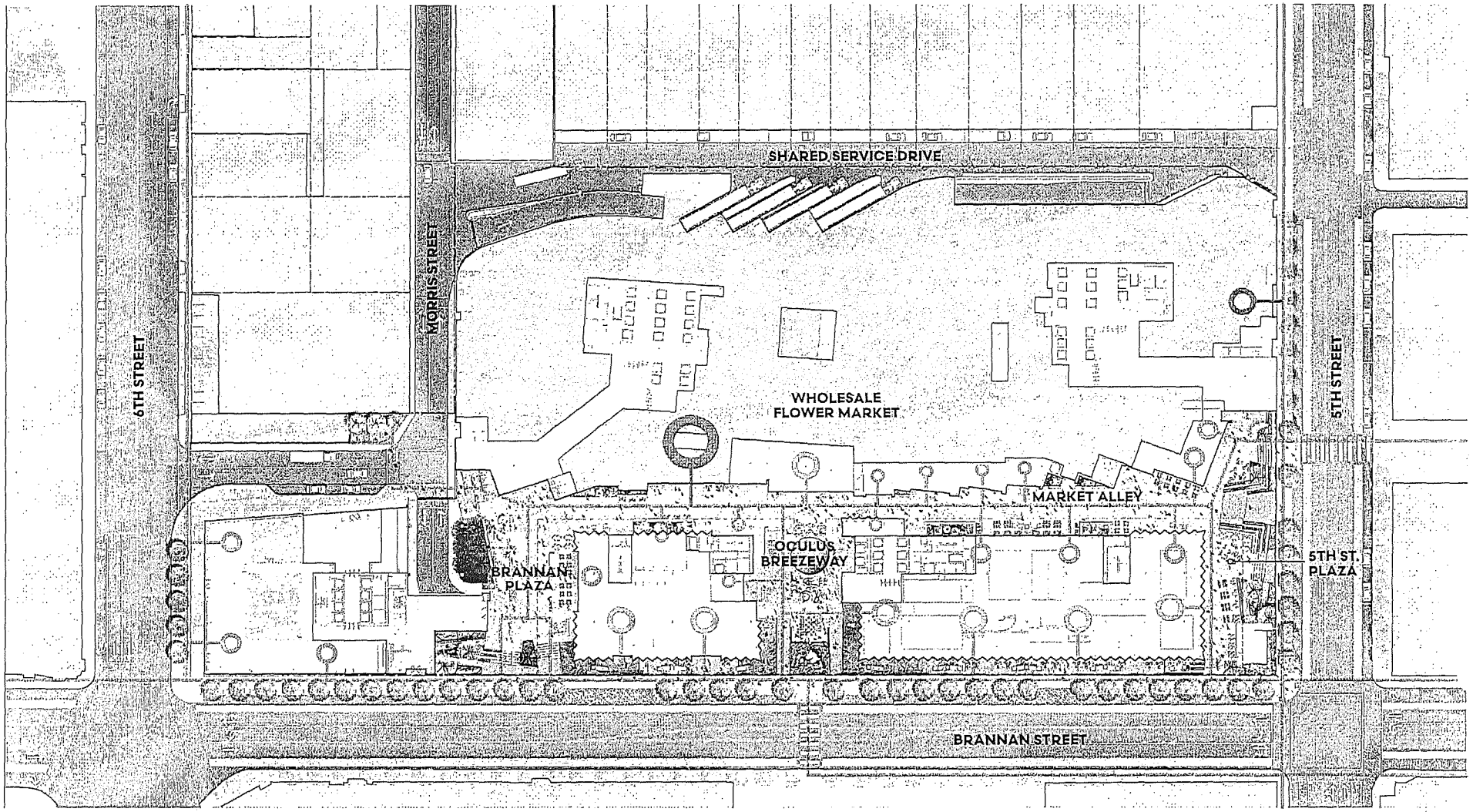
PROGRAM: OFFICE

Scale: 1" = 80'-0"

North

KILROY

adamson | RCH STUDIOS



819

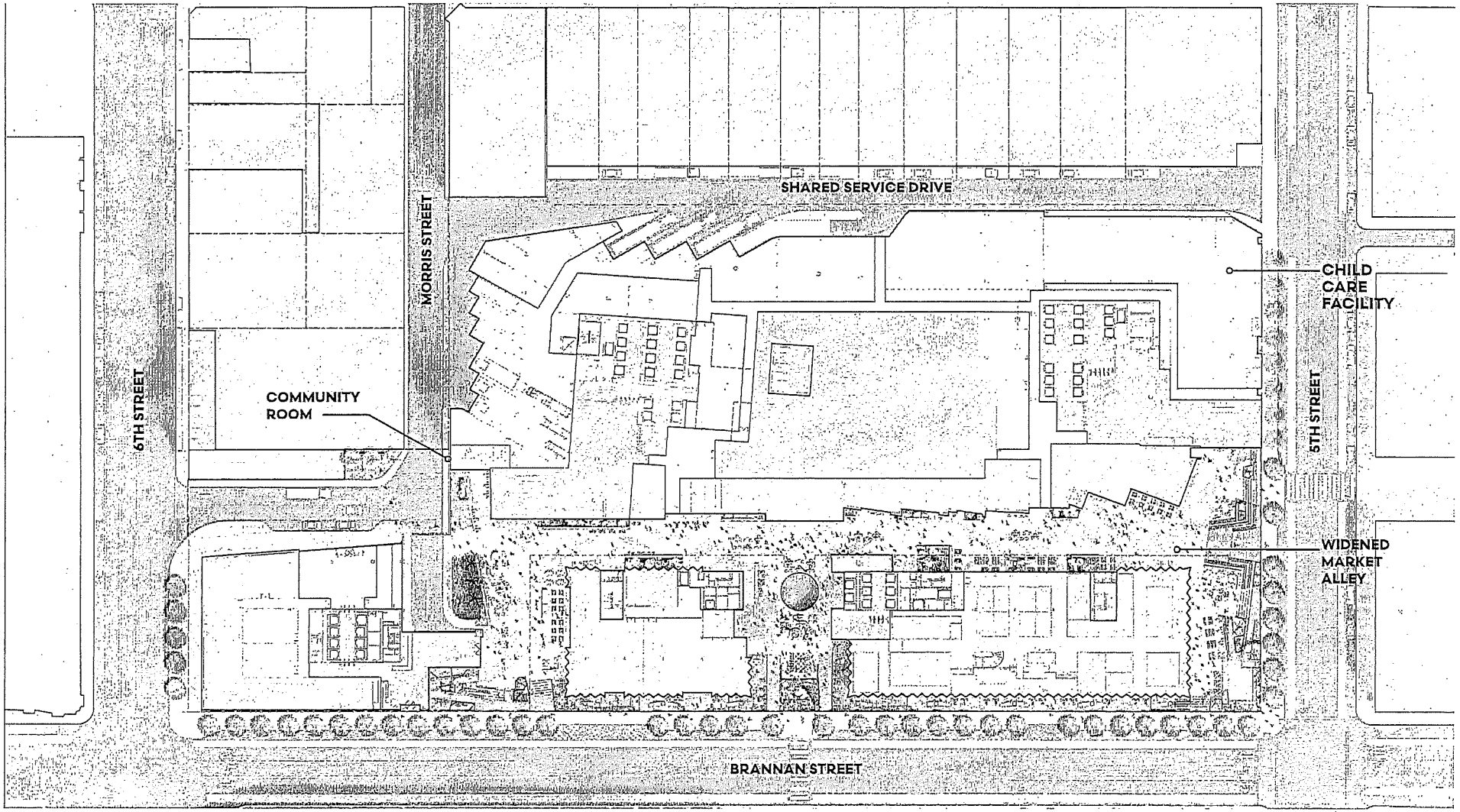
PROGRAM: SAN FRANCISCO WHOLESALE FLOWER MART

Scale: 1" = 80'-0"

North

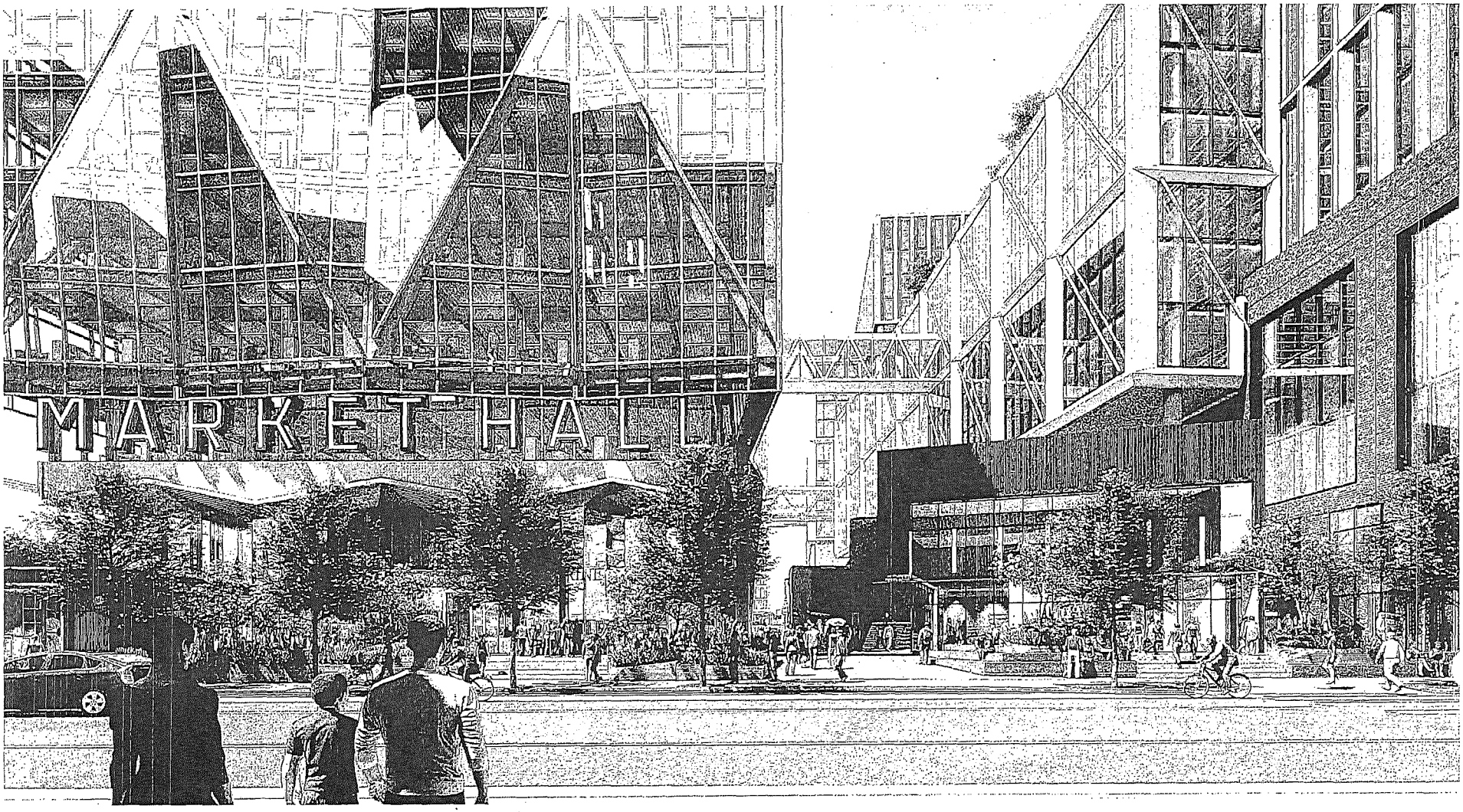
KILROY

adamson ASSOCIATES ARCHITECTS | RCH STUDIOS

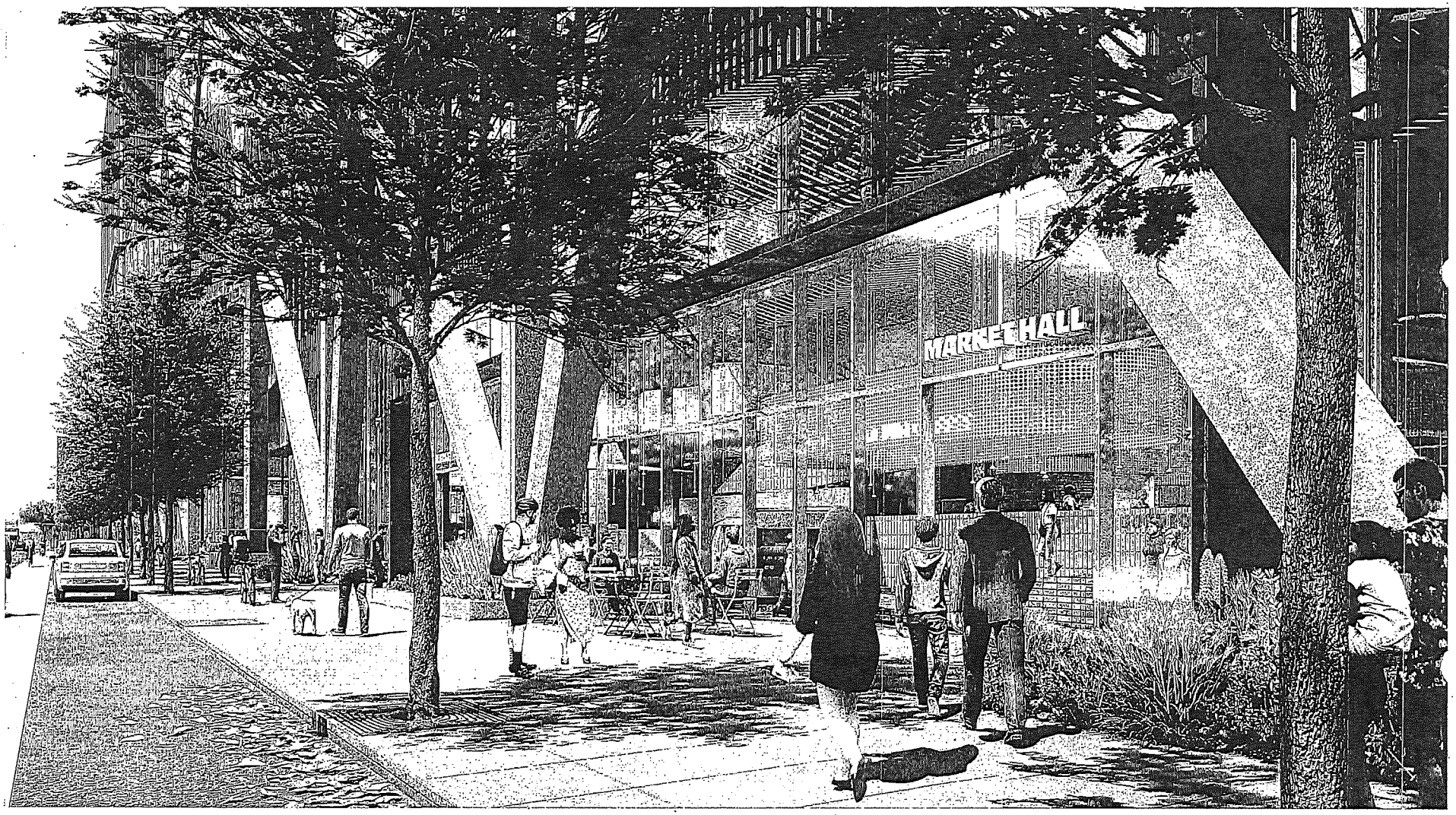


820

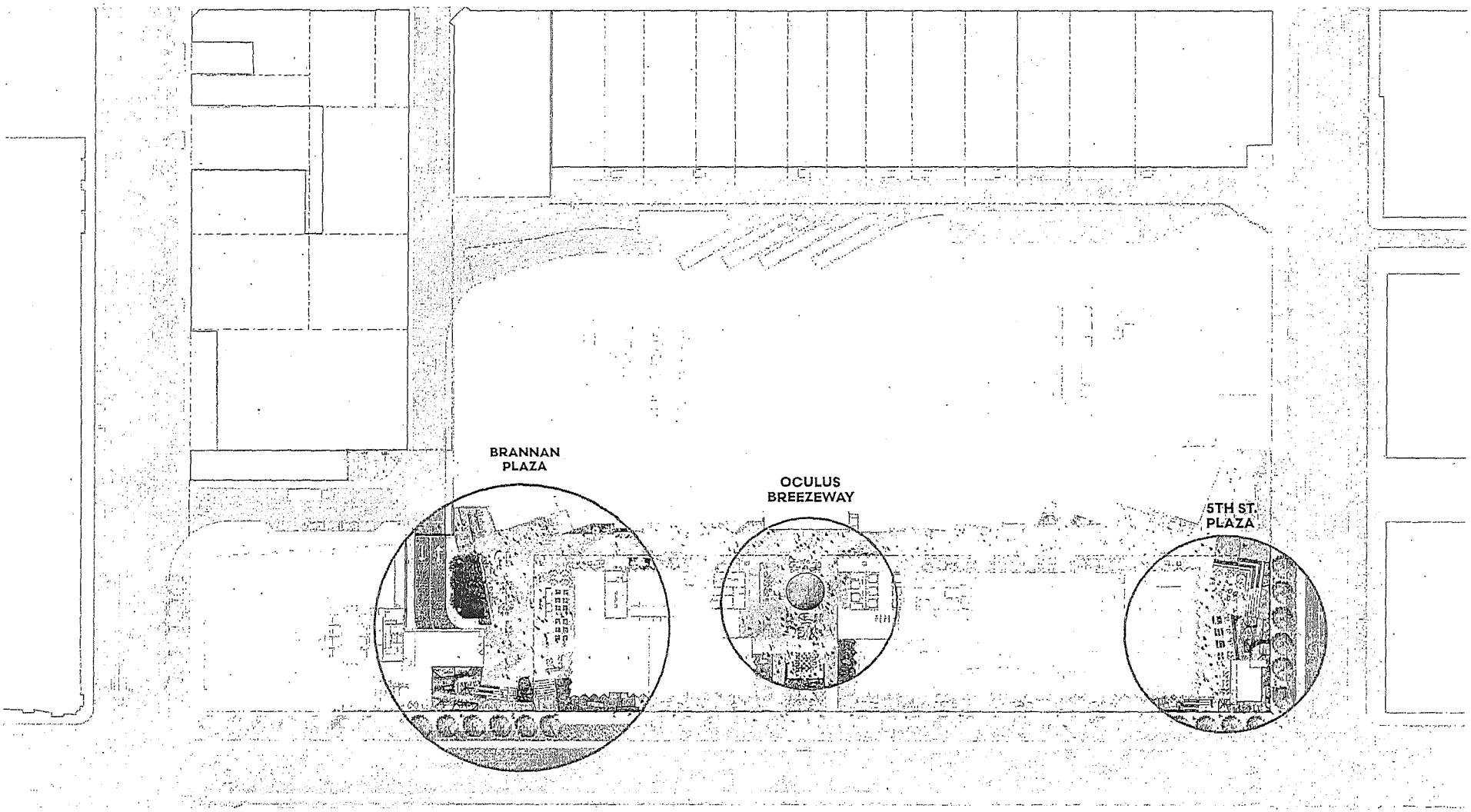
PROJECT VARIANT - PROJECT WITHOUT WHOLESALE FLOWER MART



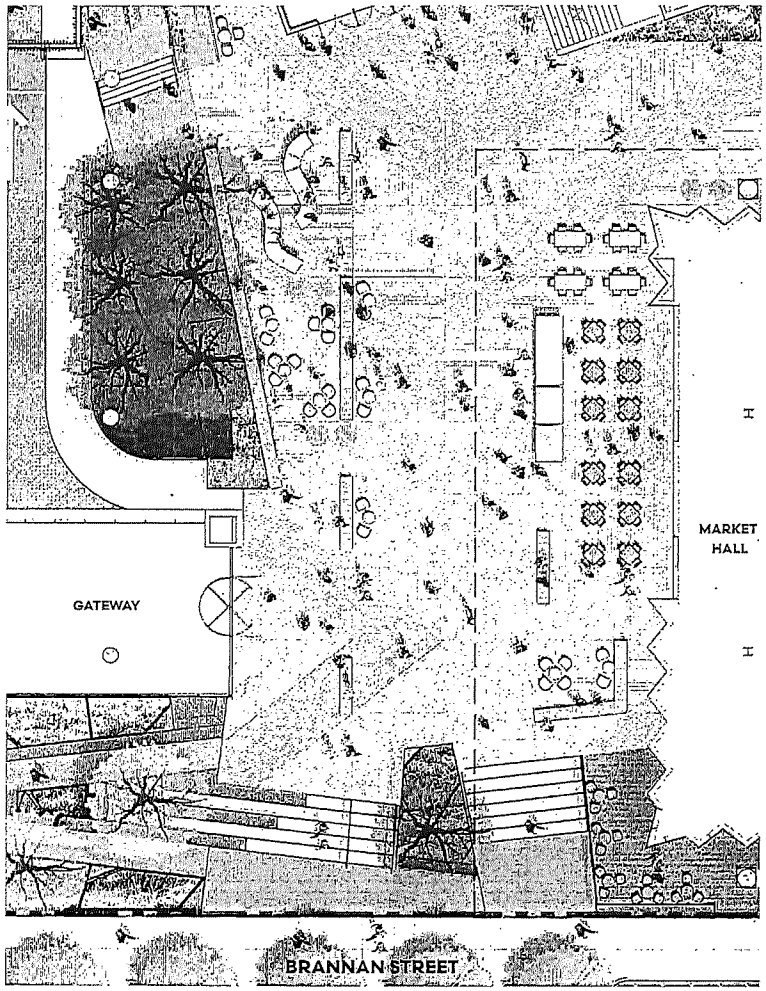
5TH STREET PLAZA AND MARKET ALLEY

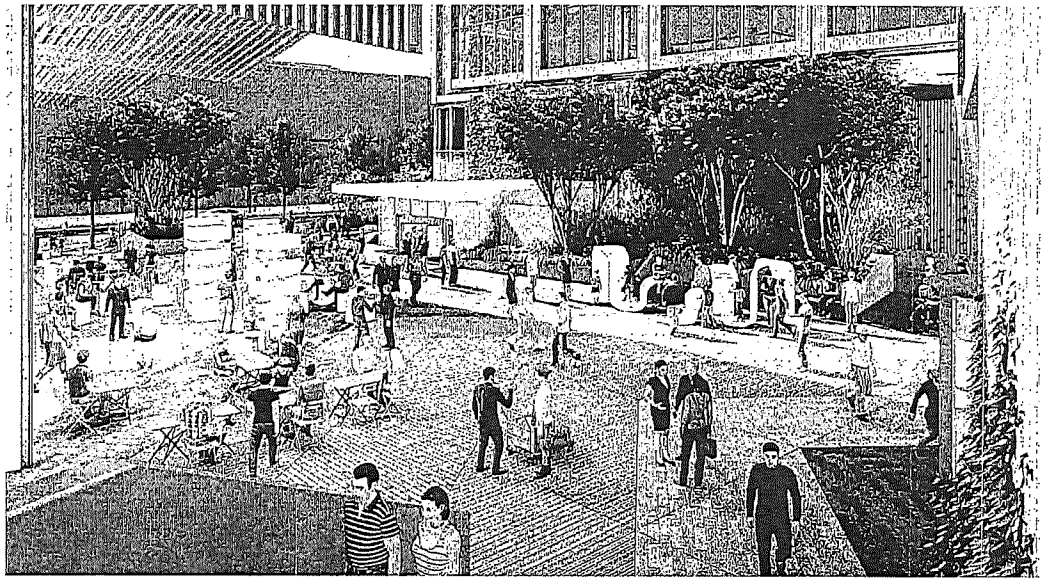


MARKET HALL ENTRY AT BRANNAN STREET

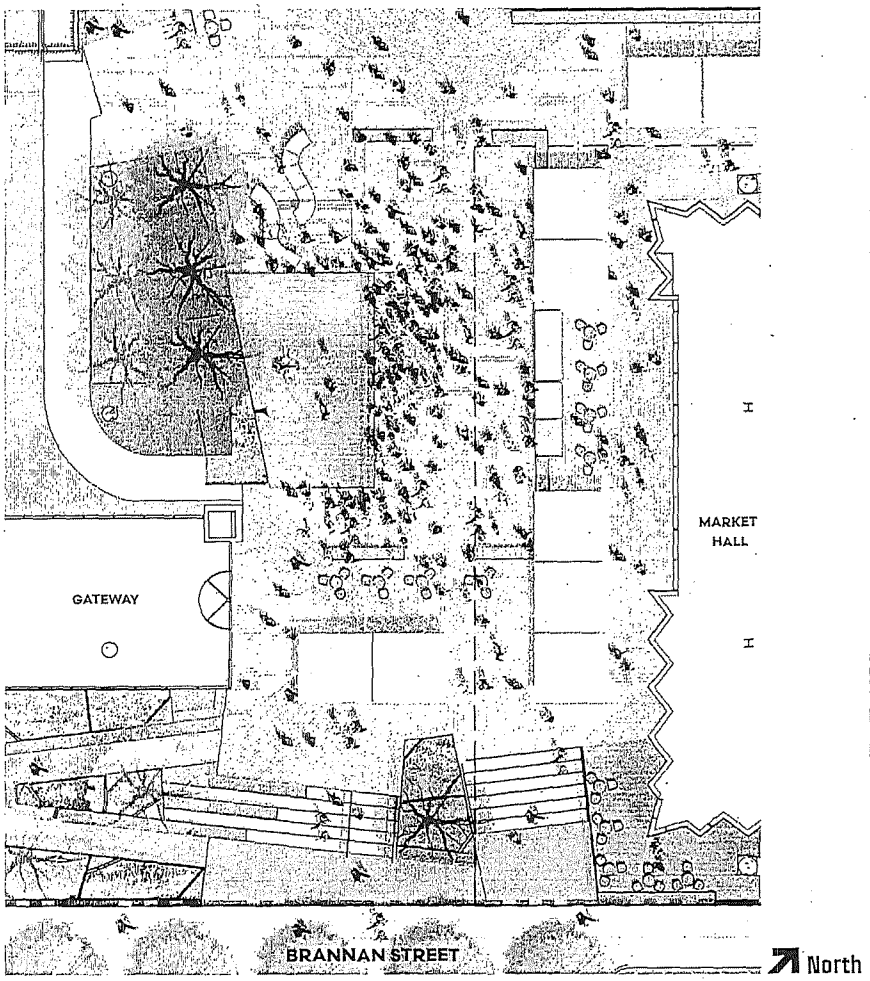


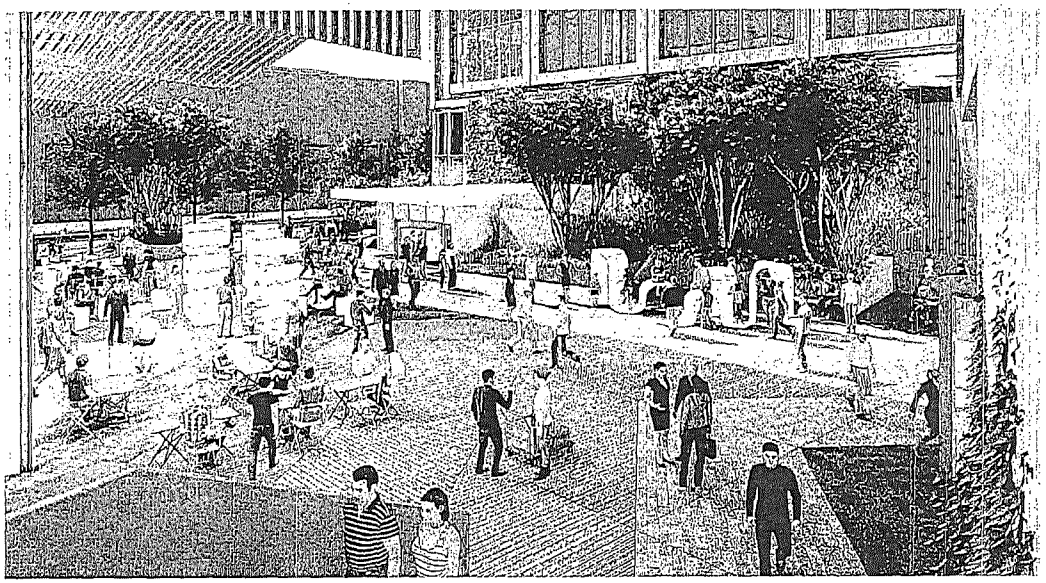
POPOS & PUBLIC PLAZAS



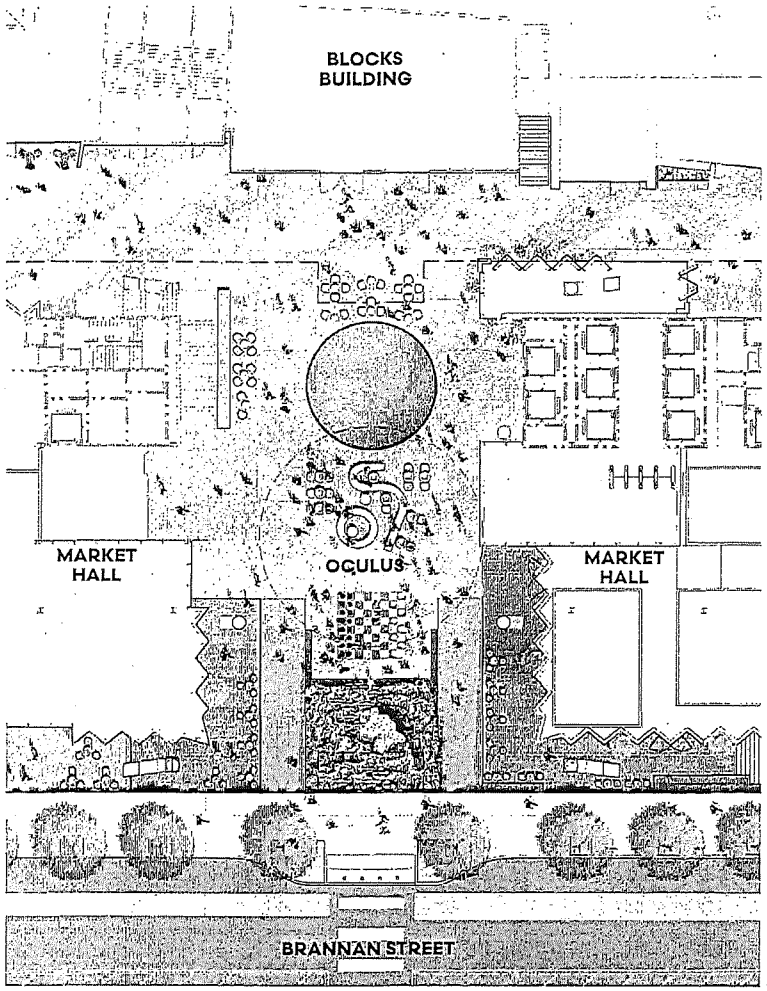


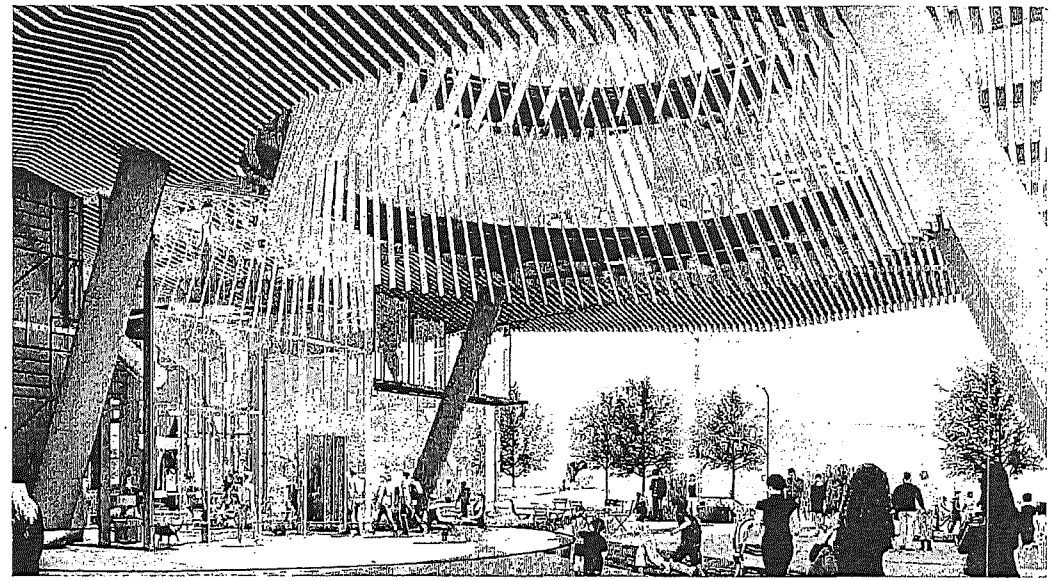
BRANNAN ST FRONTAGE & BRANNAN PLAZA



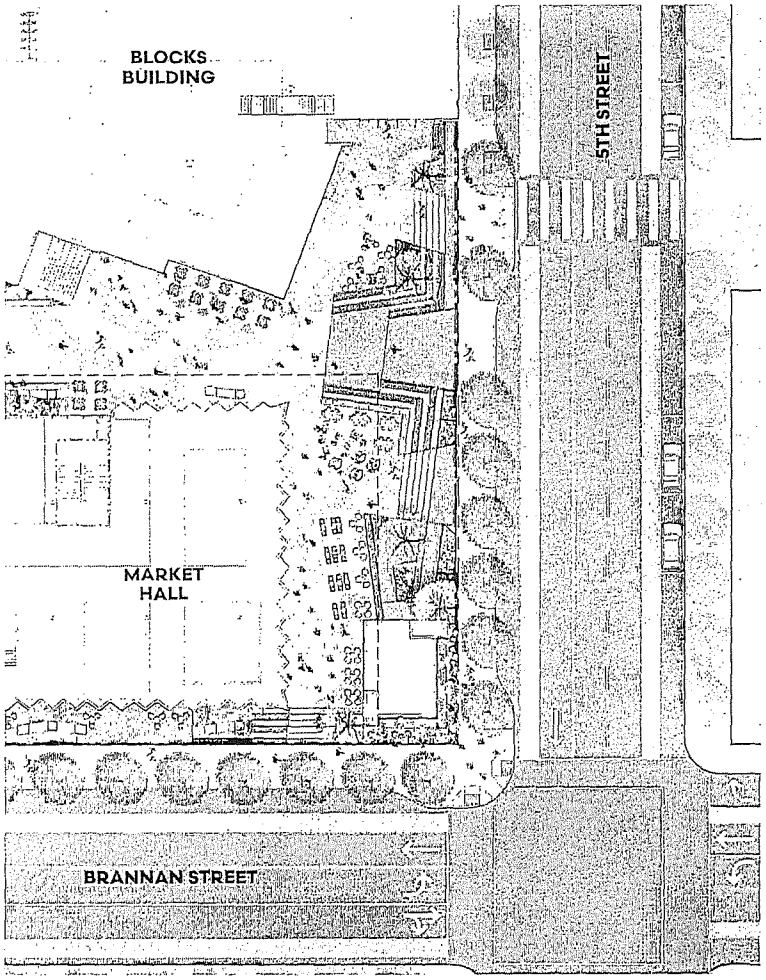


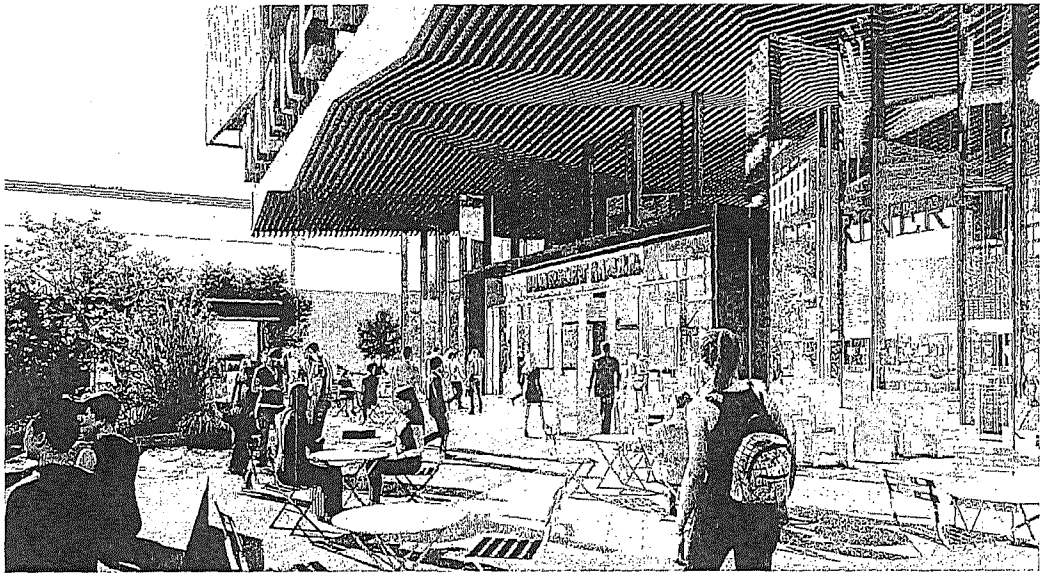
BRANNAN ST FRONTAGE & BRANNAN PLAZA



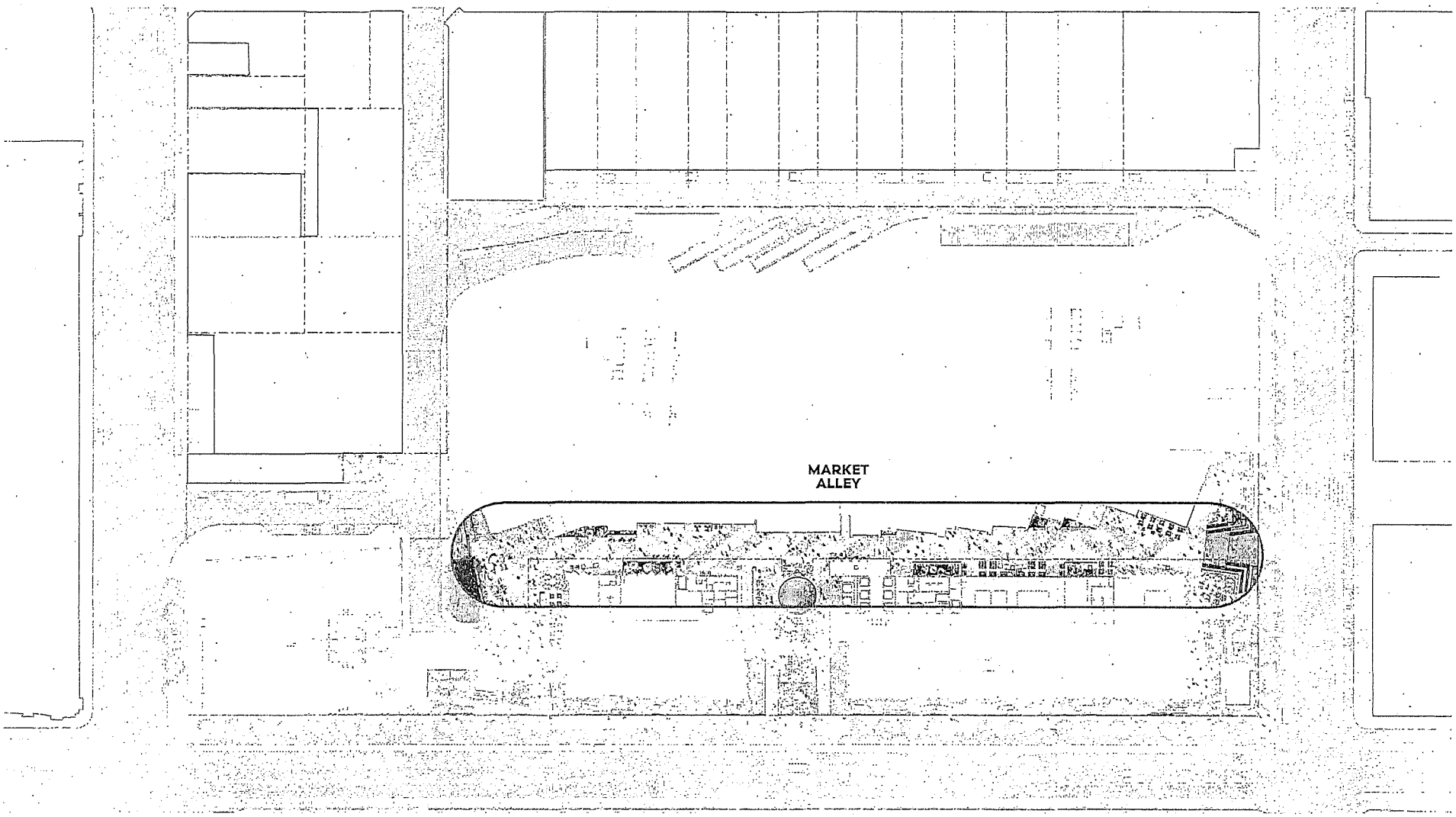


SHARED OCULUS BREEZEWAY

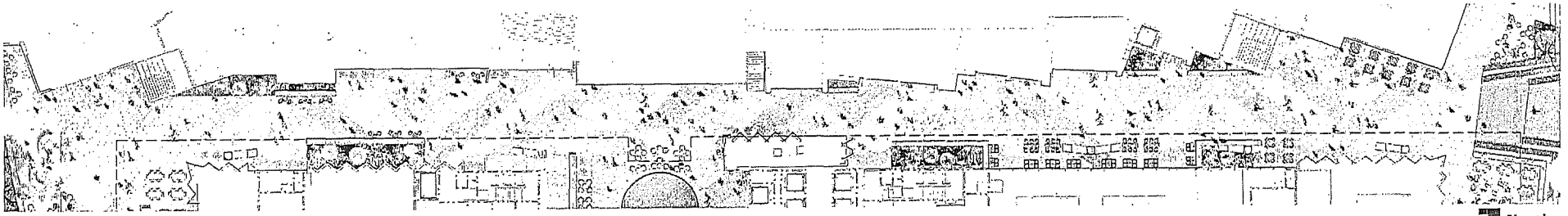


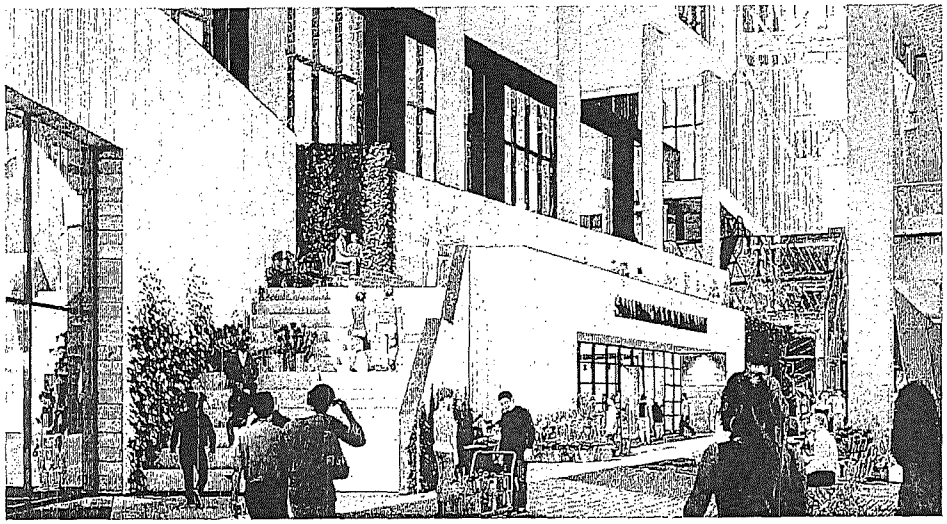


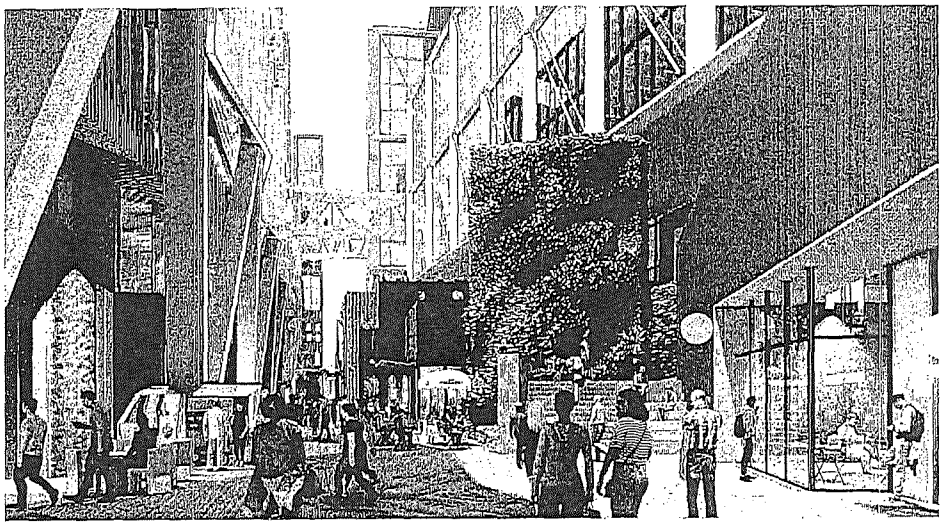
5TH STREET FRONTAGE & 5TH ST PLAZA



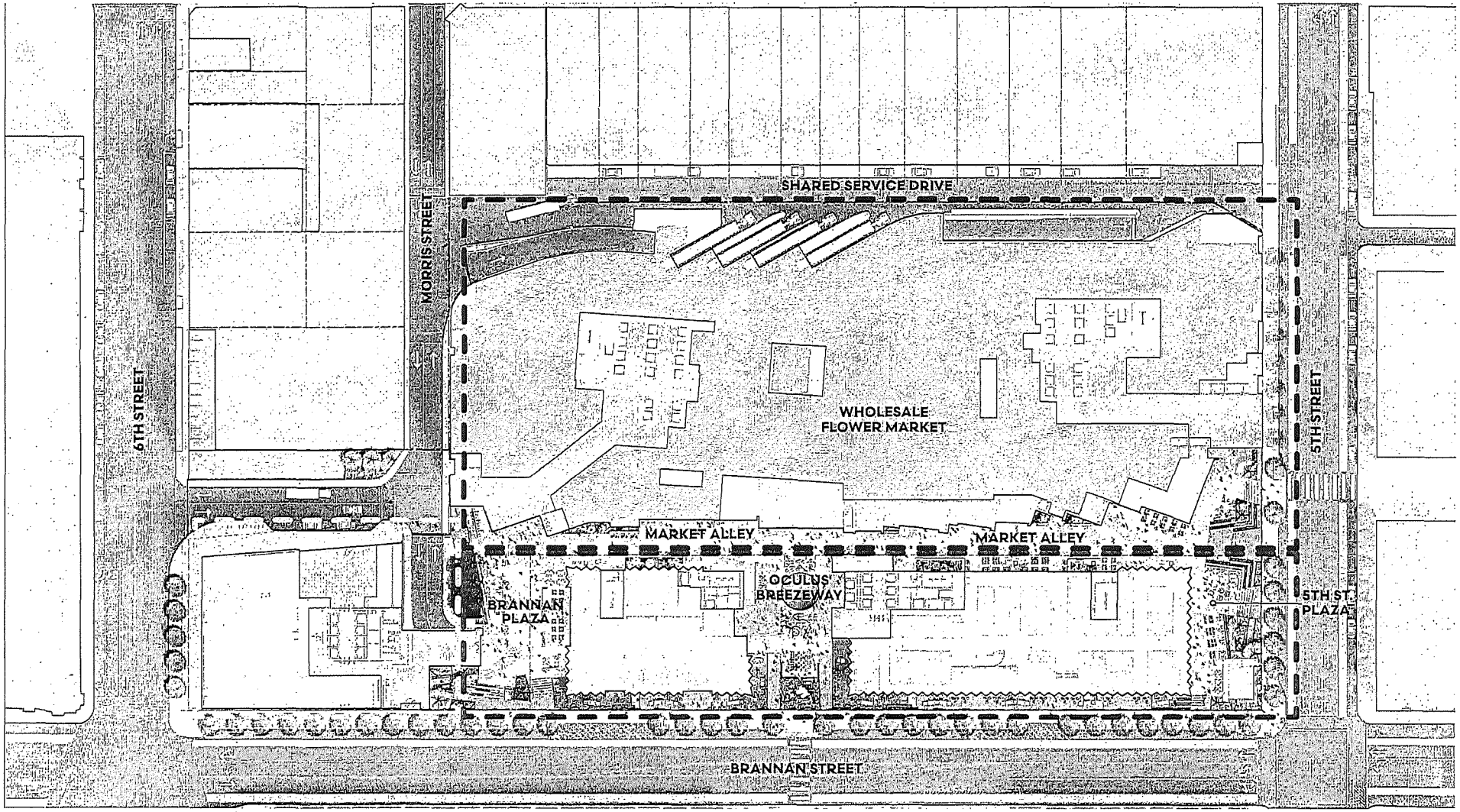
MARKET ALLEY / MID BLOCK CONNECTION







MARKET ALLEY / MID BLOCK CONNECTION



PROJECT PHASING

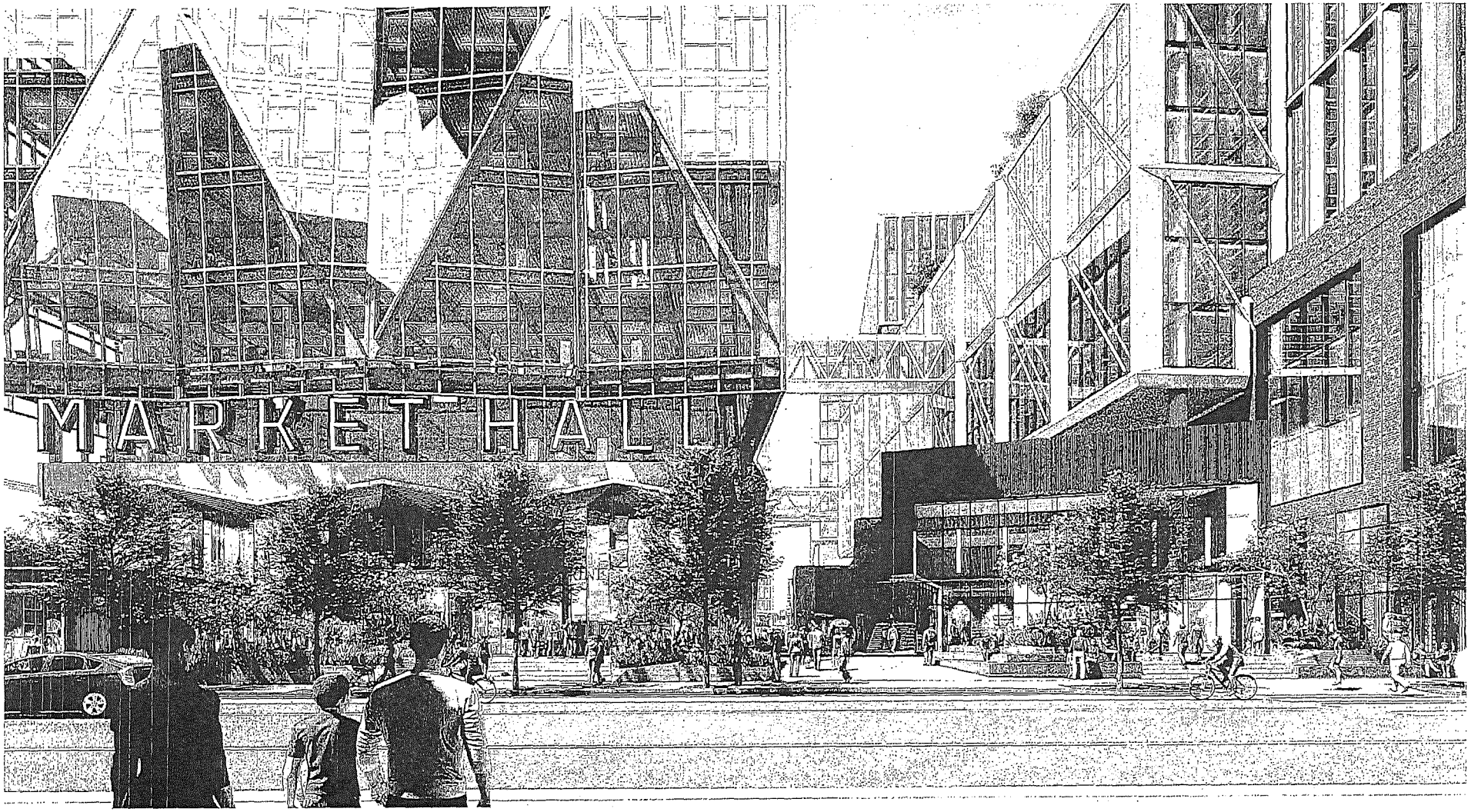
LEGEND

- Phase 1a Construction
- Phase 1b Construction
- Phase 1c Construction

North

KILROY

adamson | RCH STUDIOS
ASSOCIATED ARCHITECTS



5TH STREET PLAZA AND MARKET ALLEY

Project Summary

GROSS SQUARE FOOTAGE (GSF)	EXISTING USES	EXISTING USES TO BE RETAINED	NET REQ.	NET NEW PROVIDED	PROJECT TOTALS
ABOVE GRADE					
Wholesale Flower Market (warehouse)	141,992	113,036		0	113,036
Wholesale Flower Market (retail)	4,900 (restaurant)	4,900		5,100	10,000
Wholesale Flower Market (loading)	0	0		20,000	20,000
TOTAL FLOWER MART GSF	**146,892**	**117,936**		**25,100**	**143,036**
Residential	0	0		0	0
Retail	0	0		73,459	73,459
Office	0	0		2,032,165	2,032,165
Lot 47 Vacant	27,088	0		0	0
Other Industrial / PDR	18,461	0		0	0
TOTAL ABOVE GRADE GSF	**45,549**	**0**		**2,105,624**	**2,105,624**
AUXILIARY USES BELOW GRADE					
Wholesale Flower Market Parking	50,000	50,000		28,779	78,779
Wholesale Flower Market Trucks				48,780	48,780
Wholesale Flower Market Mech/Service				4,700	4,700
Other Parking	41,745	41,745		247,883	289,628
Cores + Other Uses				123,621	123,621
TOTAL BELOW GRADE GSF	**91,745**	**91,745**		**453,763**	**545,508**
PROJECT FEATURES					
Dwelling Units	0	0		0	0
Hotel Rooms	0	0		0	0
Wholesale Flower Market Car Parking Spaces	144	144		6	150
Wholesale Flower Market Truck Parking Below Grade	0	0		23	23
Other Uses Freight Loading Below Grade	0	0		3	3
Other Parking Spaces	105	105	619	514	619
Class 1 Bike Parking Spaces	0	0	410	410	410
Class 2 Bike Parking Spaces	0	0	86	86	86
Disabled Parking Spaces	10	10	31	21	31
Car Share Spaces	0	0	15	15	15
At-Grade Loading Spaces	0	0		4	4
Number of Buildings	12	0		3	3
Height of Buildings	115.9' to 29'4			85'-105' podium, 160'-200' midrise, 236' tower	85'-105' podium, 160'-200' midrise, 236' tower
Number of Stories	1 + Mezzanine			up to 18	up to 18

PROJECT VARIANT: WITHOUT WHOLESALE FLOWER MARKET

Project Features

VEHICLE PARKING
Per Zoning Code

1. Permitted Parking

Program	gfa	ofa		Spaces
Retail	90,976	53,920	1:1500 gfa	61
Office	2,061,380	1,997,829	1:3500 ofa	571
		Subtotal		632

3. Car Share

632	1:50	13
	Subtotal	13

Total Auto Parking Spaces Provided **645**

4. Off-Street Loading Spaces Required

Program	gsf	ofa	Loading Spaces
Retail	90,976	53,920	2
Office	2,061,380	1,997,829	20
		Total	22

5. Off-Street Loading Spaces Provided

B-01 Basement	Service	8.5' x 20'	26
At-grade	Freight Loading	12' x 50'	3
	Freight	12' x 36'	3
	Freight (Trash)	12' x 56'	3
	Total Service		26
	Total Freight		9

BICYCLE PARKING
Required by Zoning Code

6. Class 1

			Spaces
Office	1,997,829 ofa	1:5000 ofa	400
Retail	29,646 ofa	1:7,500 ofa	4
Eating	24,274 ofa	1:7,500 ofa	3
Child care	22,690 sf	1:20 children	6
		Subtotal	413
		Total (125%)	**516**

7. Class 2

			Spaces
Office	1,997,829 ofa	2 + 1:50,000 over 5,000	42
Retail	29,646 ofa	1:2,500 ofa	12
Eating	24,274 ofa	1:750 ofa	32
Child care	22,690 sf	1:20 children	6
		Subtotal	**92**

8. Showers & Lockers

Per TDM Active-3		Qty.
Showers	1:30 Class 1 Spaces	18
Lockers	6:30 Class 1 Spaces	103

RETAIL GROSS FLOOR AREA
Areas by Type

Basement Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
B-02		8,020				8,020
	Total	**8,020**	**0**	**0**	**0**	**8,020**
Market Hall Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		4,860	8,478		20,511	33,849
2nd Floor		12,162		6,488		18,650
Market Hall Penthouse			8,404			8,404
	Total	**17,022**	**16,882**	**6,488**	**20,511**	**60,903**
Blocks Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		9,928		3,967	1,665	15,560
	Total	**9,928**	**0**	**3,967**	**1,665**	**15,560**
Gateway Retail						
		Retail	Quality Restaurant	Restaurant	Café	SF
Ground Floor		6,493				6,493
	Total	**6,493**	**0**	**0**	**0**	**6,493**
Total Project Retail GFA		**41,463**	**16,882**	**10,455**	**22,176**	**90,976**

FROM : FAX NO. : Dec. 6 2019 10:34AM P1

Item# 8 - LAND USE, Dec. 9, 2019 FILE #190662

Repetto

Dear Board of Supervisors:

We're writing to you on behalf of our floral and event community, asking that you act to ensure the continued viability of our San Francisco Flower Market.

We are among the 4,000+ customers of the Flower Market — small business owners who employee hundreds of people and generate millions of dollars in business here in San Francisco and across Northern California. Every hotel, event company, convention, bride, church, temple and restaurant in the city relies on us to provide florals for their events and customers, and WE rely solely on the Flower Market as our source for the product we need to service our clients.

The survival of the San Francisco Flower Market is absolutely essential to the survival of our own businesses - a fact which we cannot stress enough to you. There is *no* alternative source for the flowers we need on a daily basis, and without the Market, our businesses cannot survive. The City and County of San Francisco will feel our loss in the lost revenue from our sales, the lost jobs, and the failure of our businesses.

Kilroy understood when they purchased the Flower Market site that the deal was contingent on creating a new home for the Market. They stand to make millions of dollars on this project, and they should not be allowed to do it on the backs of small business owners here in San Francisco.

If the plan presented to you today does not provide a stable, guaranteed new home for the Flower Market, we urge you to withhold approval of this project until such time that it does.

Sincerely,

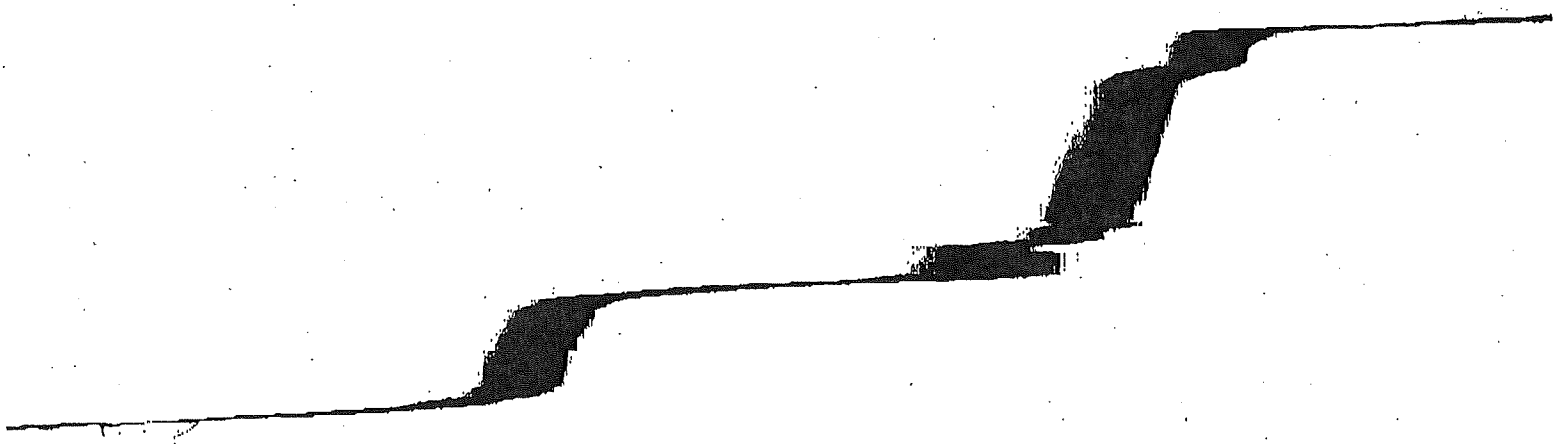
NAME	EMAIL	BADGE #
Steven W. Brown	Sbfloral@aol.com	2829

[2]

Steven W. [signature] Sbtloral@aol.com 2829

Jenny [signature] jennystab@comcast.net 5177

[signature] hemmee@att.net



NAME	EMAIL	BADGE #
Aiki Davidson	nab8033@gmail	5177
S.M. Porter	?	?
Joanne B. Yabut	myabut@ccsf.edu	5177
JASEN ILDEFONZO	jildefonzo@gmail.com	5177
MONICA COLLINS	lizzy2k@gmail.com	
MICHAEL ADAMS	facilitato@aol.com	
Harry Bernstein	riquerique@yahoo.com	
Sally Magnuson	chencho415@Yahoo.com	
Laurie Jean Anderson	lauriej_martin@yahoo.com	

[*]

[2]

[*] We are among the largest customers of the Flower Market — small business owners who employee hundreds of people and generate millions of dollars in business here in San Francisco and across Northern California. Every hotel, event company, convention, bride, church, temple and restaurant in the city relies on us to provide florals for their events and customers, and WE rely solely on the Flower Market as our source for the product we need to service our clients.

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Sincerely,

NAME	EMAIL	BADGE #
E. BROOKE HARRINGTON		3531
	VALLEY FLORA @ EARTHLINK.NET	
Sylvia Burgess / MONTBRETIA INC 1932		

Figone

Dear Board of Supervisors:

We're writing to you on behalf of our floral and event community, asking that you act to ensure the continued viability of our San Francisco Flower Market.

We are among the 4,000+ customers of the Flower

NAME	EMAIL	BADGE #
Maia Bull	maiagbull@gmail.com	4393
Denise Burnett	denise@blossomssanmateo.com	1329
Rebekah Northway	rebekah@thepetalersf.com	#3003
Lisa Berlin-Solberg	lisa@menlobotanica.com	#3317

FSS

Dear Board of Supervisors:

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Sincerely,

NAME	EMAIL	BADGE #
Jack D Epstein	chocolatecoveredSF @gmail.com	415-641-8123
Maurice Kari	Karimaurice@ych.com	415 366 2511 #3149
Jeanne Waller	jeanne@fringeflowers.com	#3561

K

NAME	EMAIL	BADGE #
East Bay Flower	ebfca06@comcast.net	4147
Elizabeth Sparks	esparkssf@gmail.com	#5032
Sona Pehlivanian	Frank's floral shop	#4610
Karen Rossi	GOODEARTH/Village Green	#3143 + 6281
Julie Stevens	julie@juliestevensdesign.com	#1556
Michael Design	michael@michael.com.	#3391
[illegible]	LanceLew1@gmail.com	3056
Felice Faison	felicefaison@anaviv.com	2002
LEAH LAGNE	leah@waterlilypond.com	216
Diane Tiry	Diane@waterlilypond.com	216
Nancy Montes	ARAFFINAFLORAL@SBCGLOBAL.NET	6638
[illegible] Austin	JR@nigellasf.com	6001
Cheri MIMS	cmims29@gmail.com	6257
Marnie Lyman	flowersbymarnie@gmail.com	4370
Greg Lum	sharkbite341@gmail.com	10015
Jackie Simpson	JacquelynW@tastecatering.com	2547
Coni Oakson	Oakson42@gmail.com	1983
PATTY SISKIND	PWSISKIND@GMAIL.COM	8024

Pacific Coast

Dear Board of Supervisors:

We're writing to you on behalf of our floral and event community, asking that you act to ensure the continued viability of our San Francisco Flower Market.

We are among the 4,000+ customers of the Flower Market — small business owners who employee hundreds of people and generate millions of dollars in business here in San Francisco and across Northern California. Every hotel, event company, convention, bride, church, temple and restaurant in the city relies on us to provide florals for their events and customers, and WE rely solely on the Flower Market as our source for the product we need to service our clients.

The survival of the San Francisco Flower Market is absolutely essential to the survival of our own businesses - a fact which we cannot stress enough to you. There is *no* alternative source for the flowers we need on a daily basis, and without the Market, our businesses cannot survive. The City and County of San Francisco will feel our loss in the lost revenue from our sales, the lost jobs, and the failure of our businesses.

Kilroy understood when they purchased the Flower Market site that the deal was contingent on creating a new home for the Market. They stand to make millions of dollars on this project, and they should not be allowed to do it on the backs of small business owners here in San Francisco.

If the plan presented to you today does not provide a stable, guaranteed new home for the Flower Market, we urge you to withhold approval of this project until such time that it does.

Sincerely,

NAME	EMAIL	BADGE #
S. WOOD		#8273
F. EDDY	frankeddy@mac.com	#[illegible]6256
JUDY SIEBEL	judy@emilyjoubert.com	#3864

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Felicia Schonborn	Yourmemoriesforever@gmail	
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Amy Bibeau	amy.bibeau@gmail.com	#2090
TIM O'SHEA	TIM@GREEN17DESIGN.com	4615
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KAREN Moy	HILLSIDEASSOC3@GMAIL.COM	#4849
Kelly Carr	Trillium Design	3753
Maurisse Murrell		2956
Natasha Lisitsa	NATASHA@waterlilypro...	2161
Ricardo Aguilar	ricardo@velaflor.com	#6073
STEPHEN O'CONNELL	FLORAMOR.COM	#2020
aNelle Boyle	Violettaflowers@gmail.com	#416

[*]

[2]

FROM : FAX NO. : Dec. 6 2019 10:40AM P1

Torchio

Dear Board of Supervisors:

We're writing to you on behalf of our floral and event community, asking that you act to ensure the continued viability of our San Francisco Flower Market.

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Sincerely,

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Janet C. Farina	janet@freshlycut.com	2020
Karl Eckel	karl@delfortwest-flowers	3295
Elizabeth Nordman	fleuristas@wisteriarockridge.com	3413
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Kellie [illegible]	1600 [illegible] .com	61661

8461

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Sarah Reyes Wildflower and Fern #1891

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LARRY HOOGKAMP CONTACT@HOOGKAMP.COM #2116

John James john@johnjamesdesigns. #6060

Brianna@churchstreetflowers.com #1346

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Evan Hedelson [illegible]@gmail.com 3764
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Yolanda Nagera #1787

Judy [illegible]

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Heidi Walker	heihopes@yahoo.com	
Neal Hand	neal@[illegible]littlefield.com	#2005

COMMITTEE ON J O B S

190682
Received via email
12/9/19

December 9, 2019

The Honorable Aaron Peskin, Chair
The Honorable Matt Haney
The Honorable Ahsha Safai

Dear Supervisors:

On behalf of the Committee on Jobs, a San Francisco association representing many of the City's largest employers, I write to express our strong support for the SF Flower Mart Central SoMa Project.

As you know, San Francisco faces a significant shortage of commercial office space, with one of the lowest vacancy rates in the nation, which has also translated into some of the highest prices. This office space crunch punishes businesses of all shapes and sizes, including nonprofit organizations, small businesses, manufacturers, and traditional businesses, through high leasing costs that are forcing them to consider moving out of an increasingly cost-prohibitive San Francisco office market.

In addition to providing much-needed new commercial office space at a critical time for San Francisco, the Flower Mart project also provides unprecedented economic, housing, community and employment benefits, including:

- $231 million in impact fees, including $110 million for new affordable housing.
- $39.2 million in direct annual tax revenue for the City/County of San Francisco
- 8,050 annual construction-related jobs, with economic output totaling $1.5 billion during the construction period (2020-2023)
- 14,800 SF off-site land dedication to Mayor's Office of Housing for 100% affordable housing (up to 100+ units)
- Enhanced workforce program
- 100,000 SF neighborhood-serving retail & market hall
- 36,000 SF on-site privately-owned public open space
- Build a brand new wholesale flower mart to preserve San Francisco's wholesale flower industry.

For these and other reasons, the Committee on Jobs urges you to support the SF Flower Mart Development Agreement. Thank you for your consideration.

Sincerely,

Chris Wright
Executive Director

235 Montgomery Street, Suite 965 • San Francisco, CA 94104 • telephone 415-956-9966 • fax 415-956-9989

Major, Erica (BOS)

om:	Chris Wright <chris@sfjobs.org>
Sent:	Monday, December 09, 2019 10:19 AM
To:	Peskin, Aaron (BOS); Haneystaff (BOS); Safai, Ahsha (BOS)
Cc:	Sandoval, Suhagey (BOS); RivamonteMesa, Abigail (BOS); Angulo, Sunny (BOS); Major, Erica (BOS)
Subject:	CoJ letter in support of the SF Flower Market Central SoMa Project
Attachments:	CoJ Letter in support of the SF Flower Market Central SoMa Project.pdf

December 9, 2019

The Honorable Aaron Peskin, Chair
The Honorable Matt Haney
The Honorable Ahsha Safai

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Sincerely,

Chris Wright
Executive Director

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

LAND USE AND TRANSPORTATION COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Land Use and Transportation Committee will hold a public hearing to consider the following proposals and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

Date: **Monday, December 9, 2019**

Time: **1:30 p.m.**

Location: **Legislative Chamber, Room 250, located at City Hall**
1 Dr. Carlton B. Goodlett Place, San Francisco, CA

Subjects: **File No. 190681.** Ordinance amending the Planning Code and Zoning Map to establish the 2000 Marin Street Special Use District (Assessor's Parcel Block No. 4346, Lot No. 003), and to create additional Key Site exceptions for the Flower Mart site, located on the southern half of the block north of Brannan Street between 5th Street and 6th Street (Assessor's Parcel Block No. 3778, Lot Nos. 001B, 002B, 004, 005, 047, and 048); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

File No. 190682. Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the development of an approximately 6.5-acre site located at 5th Street and Brannan Street, with various public benefits including a new on-site or off-site wholesale flower market; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving the receipt and expenditure of funds for an off-site new wholesale flower market as set forth in the Development Agreement, as applicable; approving the development impact fees for the project and waiving certain Planning Code fees and requirements for a temporary flower market; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; and ratifying certain actions taken in connection therewith, as defined herein.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made part of the official public records in these matters, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to these matters can be found in the Legislative Research Center at sfgov.legistar.com/legislation. Meeting agenda information relating to this matter will be available for public review on Friday, December 6, 2019.

Angela Calvillo
Clerk of the Board

DATED/MAILED/POSTED: November 27, 2019

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

June 19, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On June 11, 2019, Supervisor Haney submitted the following proposed legislation:

File No. 190681

Ordinance amending the Planning Code to reference the Polk/Pacific Special Area Design Guidelines; affirming the Planning Department's determination under the California Environmental Quality Act; adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

File No. 190682
Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC, a Delaware limited liability company, for the development of an approximately 6.5-acre site located at 5th Street and Brannan Street, with various public benefits including a new on-site or off-site wholesale flower market; making findings under the California Environmental Quality Act, findings of conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1(b); approving the receipt and expenditure of funds for an off-site new wholesale flower market as set forth in the Development Agreement, as applicable; approving the development impact fees for the project and waiving certain Planning Code fees and requirements for a temporary flower market; confirming compliance with or waiving certain provisions of Administrative Code, Chapter 56; and ratifying certain actions taken in connection therewith, as defined herein.

The proposed ordinances are being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinances are pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 JUN 11 PM 3:48
BY

Time stamp or meeting date

I hereby submit the following item for introduction (select only one):

☑ 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).

☐ 2. Request for next printed agenda Without Reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee.

☐ 4. Request for letter beginning :"Supervisor [ ] inquiries"

☐ 5. City Attorney Request.

☐ 6. Call File No. [ ] from Committee.

☐ 7. Budget Analyst request (attached written motion).

☐ 8. Substitute Legislation File No. [ ]

☐ 9. Reactivate File No. [ ]

☐ 10. Topic submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☒ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Haney

Subject:

Development Agreement – KR Flower Mart, LLC – Flower Mart Project – Fifth and Brannan Street

The text is listed:

Ordinance approving a Development Agreement between the City and County of San Francisco and KR Flower Mart, LLC

Signature of Sponsoring Supervisor:

For Clerk's Use Only