[City Draft 4/16/20]

CONDITIONAL PROPERTY EXCHANGE AGREEMENT

by and between

EQX JACKSON SQ HOLDCO LLC,
as Developer

and

CITY AND COUNTY OF SAN FRANCISCO,
as the City

For the improvement and exchange of

530 Sansome Street and 425-439 Washington Street
San Francisco, California

_____, 2020

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LIST OF EXHIBITS

CONDITIONAL PROPERTY EXCHANGE AGREEMENT
(530 Sansome Street and 425-439 Washington Street, San Francisco)

THIS CONDITIONAL PROPERTY EXCHANGE AGREEMENT (this "**Agreement**") dated for reference purposes only as of _____, 2020, is by and between EQX JACKSON SQ HOLDCO LLC, a Delaware limited liability company ("**Developer**"), and the CITY AND COUNTY OF SAN FRANCISCO, a Charter city and county (the "**City**").

RECITALS

A. City owns that certain improved real property at 530 Sansome Street in San Francisco (Lot 17, Block 0206), as more particularly described in Exhibit A (the "**Existing City Property**"), and Developer owns that certain improved real property adjacent to the Existing City Property at 425-439 Washington Street (Lots 13 and 14, Block 0206), as more particularly described in Exhibit B (the "**Existing Developer Property**").

B. The Existing City Property is improved with a fire station that City wants to replace, and the Existing Developer Property is currently improved with a 2-story building and a 3-story building.

C. If the CEQA Date (as defined in Section 1.6 below) and the Agreement Ratification Date (as defined in Section 1.7 below) occur, Developer and City are interested in the following:

(i) having a lot line adjustment or subdivision processed with respect to the Existing City Property and Existing Developer Property that results in the Existing City Property and the Existing Developer Property collectively being comprised of one or more parcels collectively comprising approximately 9,873 square feet at the corner of Washington and Sansome Streets (the "**New Developer Parcel**") and one approximately 7,860 square foot legal parcel (the "**New City Parcel**");

(ii) having the City ground lease to the Developer the Existing City Property pursuant to the terms of the Ground Lease (as such term is defined in Section 2.10 below) so Developer can construct a new tower with a hotel, a health sports club, and office space (or residential condominiums subject to market conditions) on the New Developer Parcel (the "**Tower Project**") at Developer's sole cost;

(iii) having Developer construct a new fire station on the New City Parcel (the "**Station Project**") at Developer's sole cost, subject to any City election (in its sole discretion) to contribute to any Station Project costs that exceed the Maximum Cost, as defined in Section 2.1(b) herein, and in accordance with the terms and conditions of this Agreement; and

(iv) on completion of the Station Project, transferring title so the New Developer Parcel is owned in fee by Developer and the New City Parcel is owned in fee by City.

D. Developer intends to pursue the following entitlements for the Station Project and the Tower Project (together, the "**Combined Project**"): certification or adoption of a final environmental review document; amendments to the City's General Plan, Planning Code and Zoning Map to adjust height and bulk regulations; Planning Code Section 309 project review approval; a lot line adjustment or subdivision to cause the New Developer Parcel and the New City Parcel to be comprised of separate legal parcels; and demolition and building permits (collectively, the "**Proposed Entitlements**").

E. Pursuant to Resolution No. ____, File No. ___, the City's Board of Supervisors and Mayor have authorized City's Director of Property (the "**Director of Property**") to execute this Agreement.

F. City has not yet completed environmental review under the California Environmental Quality Act ("**CEQA**") (California Public Resources Code Sections 21000 *et seq*.), the CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq*.), and Chapter 31 of the San Francisco Administrative Code (hereinafter referred to as "**Environmental Review**") for the Combined Project. Section 15004(b)(2) of the CEQA Guidelines directs that "public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not: (A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance."

G. Section 15004(b)(4) of the CEQA Guidelines provides that "[w]hile mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, an agency shall not grant any vested development entitlements prior to compliance with CEQA. Further, any such pre-approval agreement should, for example: (i) Condition the agreement on compliance with CEQA; (ii) Not bind any party, or commit to any definite course of action, prior to CEQA compliance; (iii) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the "no project" alternative; and (iv) Not restrict the lead agency from denying the project.

H. The parties intend that this Agreement be a conditional land acquisition agreement as described in CEQA Guidelines Section 15004(b)(2)(A) to conditionally designate a preferred site for the Station Project and the City's potential acquisition of the New City Parcel, as improved with the Station Project, on the terms set forth in this Agreement, with compliance with the conditions of CEQA Guidelines Section 15004(b)(2)(A) and Section 15004(b)(4), and the City must complete Environmental Review of the Combined Project before taking any approval action for the Combined Project as set forth in Sections 1.5 through 1.7. The City's obligation to consummate the development and transfer transaction under this Agreement is conditioned upon the City's completion of Environmental Review in compliance with state and local law, and City's election to proceed with this transaction following such completion as set forth in Sections 1.5 through 1.7. The City does not commit to any definite course of action with regard to the Combined Project prior to such CEQA compliance and further, retains its absolute discretion to (i) require modifications to the Combined Project to mitigate significant adverse environmental impacts; (ii) select feasible alternatives that avoid significant adverse impacts of the Combined Project, including the "no project" alternative; (iii) require the implementation of specific measures to mitigate the significant adverse environmental impacts of the Combined Project, as identified through environmental review; (iv) reject all or part of the Combined Project if the economic and social benefits of the Combined Project do not outweigh otherwise unavoidable significant adverse impacts of that project; (v) approve the Combined Project upon a finding that the economic and social benefits of the proposed project outweigh otherwise unavoidable significant adverse environmental impact of that project; and (vi) deny the Combined Project.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Developer and the City agree as follows:

1. ENVIRONMENTAL APPLICATION AND REGULATORY APPROVALS

1.1 Environmental Application and Regulatory Approvals

(a) Regulatory Approvals. Developer submitted applications to the City's Planning Department for environmental review of the Combined Project and the Proposed Entitlements on December 20, 2019, and shall initiate the process for any additional approvals from any local, State or Federal governmental agency having jurisdiction needed to develop the Combined Project (collectively, the "**Regulatory Approvals**"). Developer shall diligently make commercially reasonable efforts to thereafter continue to refine and develop the plans for the Combined Project and prepare, sign and submit such materials and pay such fees as may be necessary to obtain all Regulatory Approvals on or before the Outside CEQA Date (as defined in Section 1.6 below), subject to delay caused by any condition beyond the reasonable control of Developer, including strikes, labor disputes, acts of God, the elements, governmental (local, state and/or federal) restrictions, regulations or controls, governmental (local, state and/or federal) shut downs, medical conditions affecting (or expecting to affect) the general public including, epidemics and pandemics, enemy action, civil commotion, terrorism, fire, casualty, accidents, mechanical breakdowns or shortages of, or inability to obtain, labor, utilities or material (hereinafter referred to as an "**Unavoidable Delay**"). It is understood and agreed that Developer's sole obligation with respect to procuring the Regulatory Approvals is to use commercially reasonable efforts to do so. There are no assurances that Developer will be successful in procuring the Regulatory Approvals and Developer's failure to procure the Regulatory Approvals shall not be considered a default by Developer under the terms of this Agreement.

(b) Collaboration. Developer shall use commercially reasonable efforts to obtain and shall be solely responsible for obtaining all Regulatory Approvals required for the Combined Project. Developer shall not seek any Regulatory Approval from any party other than the City without first notifying the Director of Property. Throughout the Regulatory Approval permit and approval process, Developer shall consult and coordinate with the Director of Property in Developer's efforts to obtain such permits and approvals, and the Director of Property shall cooperate reasonably with Developer. Developer and the City (acting through the Director of Property and a City project manager designated by the Director of Property) agree to work together in good faith to facilitate all environmental review and seek all Regulatory Approvals for so long as this Agreement remains in effect. The parties agree to hold regular meetings, as needed or upon either party's request, so as to coordinate all efforts relating to environmental review and the procurement of Regulatory Approvals. Developer shall not agree to the imposition of conditions or restrictions in connection with a permit or approval from any regulatory agency other than the City without the Director of Property's prior approval, which approval will not be unreasonably withheld.

(c) Project Budget. Throughout the term of this Agreement, Developer shall refine and modify the Combined Project in response to and consistent with the Environmental Review, design and entitlement processes, and consistent with such direction as may be reasonably given by the Director of Property from time to time in order to accommodate the City's operational needs and the projected project budget for the Station Project attached as Exhibit C (the "**Project Budget**"). The parties agree to update the Project Budget, and seek Board of Supervisors' consideration of the same, if the Project Budget exceeds the Maximum Cost on the Agreement Ratification Date. The parties agree to work together with the Architect during the Design and Entitlement Work process described below to revise the Station Project as needed to keep the cost below the Maximum Cost. All submittals for Regulatory Approvals shall be subject to the prior review and approval of the Director of Property. Developer shall not, without the Director of Property's prior written consent or direction, (i) propose material modifications to the Combined Project that would (A) substantively alter the proposed use of the Station Project, (B) materially decrease or increase the proposed height of the Station Project, (C) materially reduce

or increase the square footage of the Station Project, (D) materially impact the Station Project, or (E) result in any portion of the Tower Project being on the New City Parcel other than as permitted in the Tower Project Easement Agreement (as defined in Section 4.2(a) below) and/or the Reciprocal Easement Agreement (as defined in Section 4.2(b) below), or otherwise approved in writing (which approval shall not be unreasonably withheld) by the Director of Property, (ii) take actions or propose designs that would materially increase the cost of developing the Station Project or otherwise increase the Project Budget, or (iii) delay development of, or limit or restrict the availability of, necessary infrastructure serving the Station Project.

1.2 **Proprietary Capacity**

Developer understands and agrees that the City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Developer understands and agrees that neither entry by the City into this Agreement nor any approvals given by City under this Agreement shall be deemed to imply that Developer will obtain any required Regulatory Approvals from City departments, boards or commissions with jurisdiction over the Combined Project. Nothing in this Agreement shall affect or limit the rights and responsibilities of the City's Planning Department, Planning Commission, other City departments, or its Board of Supervisors with respect to the Regulatory Approvals for some or all of the Combined Project, or their discretionary rights with respect to the review, approval, imposition of conditions, or rejection of any Regulatory Approvals. The City's Regulatory Approvals shall be issued or denied, by the appropriate City department, in keeping with its standards and customary practices and without regard to this Agreement.

1.3 **Design and Entitlement Before CEQA Date**

(a) Design and Entitlement Work. Developer has prepared, and the City hereby approves, the concept plans for the Station Project submitted by Developer to City on September 27, 2019 (the "**Existing Concept Plans**"). Developer prepared, and the City hereby approves, a detailed cost estimate and schedule for completion of all of the design and engineering work required to obtain final pricing for the Station Project consistent with the Existing Concept Plans and all fees and costs associated with environmental review and the procurement of the Regulatory Approvals to the CEQA Date (collectively, the "**Design and Entitlement Work**"), which cost estimate and schedule shall be a component of the Project Budget (the "**Entitlement Budget**"). The City and the Developer shall work together in formulating a timeline for preparing construction drawings for the Station Project to enable the City and Developer to estimate pricing for the work to be performed under the Construction Contract (as defined in the following subsection) prior to the Agreement Ratification Date. By executing this Agreement, the City authorizes Developer to proceed with the Design and Entitlement Work consistent with the Entitlement Budget, the Existing Concept Plans and this Agreement. Unless otherwise directed by the Director of Property, Developer shall design the Station Project so as to achieve LEED Gold certification. The City will determine, however, whether and when to seek any such certification. The City approves Skidmore, Owings & Merrill (the "**Architect**") as the architect for the Station Project and such other architect as the Developer may hereafter designate with City's approval, which approval shall not be unreasonably withheld by the City. Selection of the general contractor for the Station Project (the "**General Contractor**") shall be subject to City approval of Developer's recommendation, which shall not be unreasonably withheld by the City. During the period that the Design and Entitlement Work is being undertaken, the City and Developer shall work with the Architect and the General Contractor to design the Station Project within the Project Budget.

(b) Project Contracts. Developer shall negotiate for the Station Project, with the City's active participation, (i) a contract between Developer and the Architect (the "**Architect Contract**"), (ii) a not to exceed maximum price contract, or a modified design-build integrated-project delivery contract, between Developer and the General Contractor (the "**Construction**

Contract"), and (iii) such other project contracts that Developer determines are necessary and appropriate to complete the Station Project (each of such contracts referenced in clauses (i), (ii) and (iii), a "**Project Contract**" and collectively, the "**Project Contracts**"). Developer and the City each agree to act reasonably and in good faith to reach agreement on the terms of each Project Contract consistent with the terms of this Agreement and as soon as reasonably possible, except that, with respect to the Architect Contract and Construction Contract, Developer and the City shall have the right to approve the same in their sole and absolute discretion. If Developer and the City cannot reach agreement during negotiations with the Architect, the General Contractor or any other project contractor for the Project Contracts, Developer and the City may agree to begin negotiations with an alternative party acceptable to both. The Project Contracts are each subject to review and approval by Developer and the City, each acting in their reasonable discretion (except as to the Architect Contract and Construction Contract) and taking into account required City contracting requirements; provided if Board of Supervisor approval of the Architect Contract or the Construction Contract is required by ordinance to exempt any City Municipal Code requirement that would otherwise apply, the parties shall use good faith efforts to expedite negotiations and seek Board of Supervisors approval of the required ordinance. If the parties cannot reach agreement on the Architect Contract or the Construction Contract on or before the five (5) month anniversary of the Effective Date (the "**First Approval Deadline**"), then either party may terminate this Agreement upon thirty (30) days' notice to the other party. For purposes of this Agreement, a "**Pre-Approved Project Contract**" shall mean any Project Contract which is less than $50,000 and includes the applicable provisions set forth in Section 2.9. City acknowledges and agrees that, as to the approval by the City and the Developer of the Construction Contract, only the form of the Construction Contract, and not the final version of the Construction Contract with the final construction costs, the exclusions from the Maximum Cost, the insurance coverages and the identity of the contractor, need be approved by the First Approval Deadline. If the City and Developer do not approve of the final version of the Construction Contract at least ninety (90) days prior to the Initial Closing Date, either party shall have the right to terminate this Agreement by delivering written notice of such termination to the other party within sixty (60) days prior to the Initial Closing Date.

If the Developer and Director of Property agree on the forms of the Architect Contract and the Construction Contract on or before the First Approval Deadline, the Director of Property shall submit such forms for consideration by the City's Board of Supervisors within the thirty (30) day period immediately following the First Approval Deadline. If the City's Board of Supervisors does not conditionally approve either contract (in its sole and absolute discretion) subject to ratification on the Agreement Ratification Date, then the parties shall seek in good faith to negotiate such changes as may be necessary to obtain the Board of Supervisor's conditional approval for a period of not less than sixty (60) days. If the parties are unable to agree to such changes in their sole and absolute discretion, or the City's Board of Supervisors does not approve of such changed forms in its sole and absolute discretion, either party shall have the right to terminate this Agreement by delivering written notice of such termination to the other party before the Agreement Ratification Date. Any Project Contract conditionally approved by the City's Board of Supervisors shall be subject to final ratification or rejection by the City's Board of Supervisors on the Agreement Ratification Date and any revisions required under all applicable City laws and regulations that are in effect at the time such Project Contract is fully executed except to the extent they are waived by the City's Board of Supervisors or other City official, department, agency or commission with such waiver authority; provided, however, the Developer shall have the right, in its sole and absolute discretion, to approve of any of such revisions and, if the Developer does not approve of any of such revisions, Developer shall have the right to terminate this Agreement by delivering written notice of such termination to the City before the Initial Closing Date.

(c) Changes to the Size of the Station Project. In connection with completion of the Design and Entitlement Work, the City may increase the overall footage of the Station Project by up to five percent (5%) with the approval of Developer and a commensurate increase in the

Project Budget, which approval shall not be withheld unless the increase would (i) reduce the size of or otherwise materially negatively impact the Tower Project, (ii) materially impact the timing or process of procuring the Proposed Entitlements, or (iii) cause the Project Cost to exceed the Maximum Cost (unless the City agrees to pay for the amount of the Project Cost that exceeds the Maximum Cost as a result of such footage increase). The City may, at any time, decrease the square footage at its option. Any dispute regarding City adjustments to the square footage of the Station Project shall be an Arbitration Matter that shall be resolved pursuant to the provisions of Section 3.1.

(d) City's Reasonable Approvals. Developer's submittals in connection with the Design and Entitlement Work shall be subject to the approval of the Director of Property, which shall not be unreasonably withheld or delayed. If the Director of Property does not approve a submittal, the Director of Property will indicate in writing the reason for the disapproval and the steps or changes to be made to obtain its approval. The Director of Property will approve, disapprove or approve conditionally each submittal of the Design and Entitlement Work in accordance with the procedures set forth in Section 14.8; provided, the provisions of Section 14.8 as to the Design and Entitlement Work shall not apply to any Board of Supervisors approval of the Architect Contract and the Construction Contract.

(e) Design and Entitlement Costs. Developer shall pay or cause to be paid when due all fees and costs associated with the environmental review and the procurement of the Regulatory Approvals, together with any design development or other costs for the Station Project incurred by Developer (collectively, the "**Design and Entitlement Costs**"). Before engaging any contractor, Developer shall deliver to the City, for review and approval which shall not be unreasonably withheld, the name and qualifications of the third-party consultants and contractors to be engaged by Developer in connection with work on the Station Project (upon the City's approval, all such consultants being defined collectively as the "**Approved Contractors**"). Following the Effective Date, Developer shall also deliver to the City on a quarterly basis a detailed summary (a "**Design and Entitlement Cost Report**") of Developer's expenditures of Design and Entitlement Costs and Combined Project D&E Costs (as defined in Section 1.3(f)) during the previous calendar quarter. Each Design and Entitlement Cost Report shall include a description of the services performed and costs paid by Developer, and the number of hours worked and rates charged with respect to services performed by hourly rate workers (as opposed to those charging a flat fee). The Design and Entitlement Cost Report shall also notify the City as soon as Developer has reason to believe that the Design and Entitlement Costs and City's share of the Combined Project D&E Costs will likely exceed the Entitlement Budget so that the parties can mutually discuss any cost savings methods or practices. Developer agrees that the Design and Entitlement Costs and City's share of any Combined Project D&E Costs shall not collectively exceed the Entitlement Budget unless approved by the City.

(f) Apportionment. If and to the extent there are environmental review or design development fees or costs that properly cover or relate to both the Station Project and the Tower Project (the "**Combined Project D&E Costs**"), then those costs shall be apportioned consistent with the apportionment schedule attached hereto as Exhibit C and made a part hereof unless Developer can demonstrate to the reasonable satisfaction of the Director of Property, or the Director of Property can demonstrate to the reasonable satisfaction of Developer, that a different allocation should be used in the interest of fairness based upon the extent to which the cost primarily relates to or arises from the Station Project or the Tower Project, as applicable (the "**Apportionment**").

(g) Records and Approval of Cost Reports. Developer shall maintain records, in reasonable detail, with respect to all Design and Entitlement Costs and Combined Project D&E Costs, and shall provide such supporting documentation as the City may reasonably request to verify Design and Entitlement Costs and Combined Project D&E Costs. Developer will also make all records available for inspection, copying and audit by the City. The City shall review

and approve or disapprove each Design and Entitlement Cost Report within fifteen (15) days following receipt; provided, for any disapproval, the City shall state its reasons for the disapproval in writing and the parties agree to meet and confer in good faith for a period to discuss any areas of disagreement. If the parties are not able to reach agreement on the appropriateness, apportionment or amount of any Design and Entitlement Cost, Combined Project D&E Costs, or Entitlement Cost Report within twenty (20) days following a disapproval by the City, either party can elect to cause such disagreement to be resolved as an Arbitration Matter pursuant to the provisions of Section 3.1 herein.

(h) City Share of Design and Entitlement Costs. If this Agreement terminates for any reason, then the City shall have no obligation to reimburse Developer for the Design and Entitlement Costs or Combined Project D&E Costs incurred by Developer to the date of termination; provided, however, that if this Agreement is terminated by the Developer due to a City Event of Default, the Developer shall have the remedies set forth in Section 9.6.

1.4 **Ownership of Work**

Developer shall own, or have a license to use, the Design and Entitlement Work with respect to the Tower Project, but Developer shall ensure that all rights of Developer in the Design and Entitlement Work with respect to the Station Project are transferable to the City without limitation, payment to or the consent of the applicable architects and engineers, and will be transferred to the City upon completion of the Station Project.

1.5 **CEQA Review**

Following receipt of Developer's complete application for Environmental Review, the City's Planning Department, acting in its regulatory capacity, will be undertaking and completing Environmental Review of the Combined Project before review and consideration by any City department or commission of the Proposed Entitlements, and before review and consideration by the City's Board of Supervisors of the Planning Code and/or Zoning Map amendments needed to permit the Combined Project, to construct the Combined Project, and to demolish the existing improvements on the Existing City Property and the Existing Developer Property. Acting in its regulatory capacity, the City will review and consider the final environmental documents (the "**CEQA Documents**") relating to the Combined Project before deciding whether to approve the Combined Project, including any associated Municipal Code, Zoning Map or General Plan amendments. Until the City, in its sole discretion, adopts or certifies the adequacy of the CEQA Documents and any administrative appeals of the adoption or certification of the CEQA Documents have been exhausted, the City, acting in its regulatory capacity, retains the sole and absolute discretion to: (i) make such modifications to the proposed Combined Project as are deemed necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid such impacts; (iii) balance the benefits against unavoidable significant impacts before taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the proposed purchase based solely upon environmental impacts disclosed by the environmental review process (collectively, the "**CEQA Contingency**"). Notwithstanding the foregoing, Developer shall have no obligation to accept any of the modifications or changes that may be required by the City pursuant to clauses (i), (ii), and/or (iii) above and, if Developer elects not to approve (which approval may be withheld in its sole and absolute discretion) any of such changes or modifications referenced in said clauses (i), (ii) and/or (iii) above, Developer shall have the right to terminate this Agreement without liability upon written notice delivered to the City on or before the tenth (10^{th}) business day immediately following the date the City's Board of Supervisors adopts or certifies the adequacy of the CEQA Documents.

1.6 **CEQA Date**

The effective date (if any) by which City completes all Environmental Review and the City's Planning Commission and Board of Supervisors (i) adopt or certify the adequacy of the CEQA Documents, and (ii) grant all City Regulatory Approvals for the Combined Project, including (a) demolition of existing buildings on the Existing City Property and the Existing Developer Property, (b) Zoning Map and/or Planning Code amendments to permit the Combined Project, and (c) Planning Code Section 309 project approval shall be referred to as the "**CEQA Date**". The parties agree to work diligently and in good faith to facilitate the completion of Environmental Review as reasonably possible, and currently anticipate that the CEQA Date could be on or before the second (2nd) anniversary of Developer submitting its application for Environmental Review to City's Planning Department (the "**Outside CEQA Date**"); provided, if following adoption, there is an administrative appeal of the adoption or certification of the CEQA Documents or of the entitlements, the CEQA Date shall be the effective date when the adoption, certification and/or entitlements have been finally determined or granted following the exhaustion of any administrative appeals. The parties may agree, subject to any injunction that prevents the City or Developer from taking the actions, to continue to process approvals or commence work notwithstanding the initiation of a legal challenge. If the initial adoption or certification of the CEQA Documents and grant of all City Regulatory Approvals has not occurred by the Outside CEQA Date, despite the best efforts of the parties, then either party may terminate this Agreement by providing sixty (60) day notice of termination to the other party, provided the parties may agree to extend the Outside CEQA Date during the above sixty (60) day period. If the certification of the CEQA Documents or the grant of all City Regulatory Approvals does not occur by the Outside CEQA Date due to a Developer Event of Default or a City Event of Default, as applicable, then the non-defaulting party shall have the remedies, if any, set forth in Section 9.6.

1.7 **Agreement Ratification Date**

(a) On the date (if any) that the City's Board of Supervisors adopts or certifies the adequacy of the CEQA Documents, the City's Board of Supervisors shall take an action (in its sole and absolute discretion), by resolution or ordinance, to either (i) ratify this Agreement, remove the CEQA Contingency, ratify the Architect Contract, the Ground Lease, the Construction Contract, the Construction Management Agreement, and the forms of the Tower Project Easement Agreement, and the Reciprocal Easement Agreement, and agree to proceed with the City's acquisition of the New City Parcel and sale (initially through the entering into the Ground Lease and, thereafter, through the transfer of fee title to the same) of the Existing City Property on the terms of this Agreement, subject only to satisfaction or waiver of the City's Conditions Precedent and Developer's Conditions Precedent, or (ii) reject this Agreement and elect not to proceed with the City's acquisition of the New City Parcel and sale of the Existing City Property solely on the basis of the impacts of the Combined Project disclosed in the CEQA Document that have not been adequately avoided, mitigated or overridden (the "**Agreement Rejection**") or disapproval of the Construction Management Agreement, Architect Contract, form of Construction Contract, Ground Lease, Tower Project Easement Agreement, and the Reciprocal Easement Agreement (the "**Contract Rejection**"). The effective date of any resolution or ordinance adopted for the matters in the foregoing clause (i) shall be the "**Agreement Ratification Date**".

(b) If the City's Board of Supervisors adopts or certifies the adequacy of the CEQA Documents but the Agreement Rejection or Contract Rejection occurs, then this Agreement shall terminate without additional cost or liability to either party.

1.8 **CEQA and Other Litigation**

Developer and City shall each pay its own costs and fees relating to any litigation or proceeding before any court or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, to defend this Agreement, the Combined Project, the

Regulatory Approvals, and actions taken by the City in its proprietary or regulatory capacity in furtherance of this Agreement, including any challenge to the adequacy of the City's Environmental Review in granting Regulatory Approvals or approving this Agreement. In the event of any such action or proceeding, the parties shall each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding. If the City and Developer are both named defendants, respondents or real parties in interest in any action, then the parties shall endeavor to enter into a joint defense agreement to protect any confidential and privileged communications among them regarding the defense of the action. If a challenge relates to both the Station Project and the Tower Project or if it is not clear to which project the challenge relates, costs and fees shall be allocated fifty percent (50%) to the Developer and fifty percent (50%) to the City, and any costs allocated to the Station Project and paid for by Developer shall be credited towards payment of the Maximum Cost. If a challenge relates to the Tower Project only, it shall not affect this Agreement or the Maximum Cost. If a challenge relates to the Station Project only, then all reasonable costs and fees associated with the same and paid by the Developer shall be credited towards payment of the Maximum Cost.

1.9 **Completion of Design, Plans, and Specifications for Station Project**

If the Agreement Ratification Date and CEQA Date occur, Developer and the City shall work together with the Architect and Contractor to complete the design, plans and specifications for the Station Project in accordance with Section 1.3, and all such Design and Entitlement Costs shall be credited towards payment of the Maximum Cost.

1.10 **Environmental and Other Due Diligence**

Developer has performed environmental due diligence of the Existing Developer Property before Developer's acquisition. Within five (5) business days following the Effective Date, Developer shall deliver to the City (to the extent it has not already delivered the same to the City) complete copies of all the environmental reports and documents Developer acquired or procured with respect to the Existing Developer Property.

2. CONSTRUCTION; GROUND LEASE

2.1 **Station Project Construction Management**

(a) Construction Management Agreement. During the five (5) month period immediately following the Effective Date, Developer and City each agree to act reasonably and in good faith to reach agreement on the form of construction management agreement (the "**Construction Management Agreement**") with respect to Developer's construction of the Station Project on the New City Parcel at its sole cost, but not to exceed the Maximum Cost except to the extent otherwise agreed to by the City and the Developer, each in their sole and absolute discretion. Within sixty (60) days following the Effective Date, Developer shall deliver a draft of the Construction Management Agreement to City for review. City shall provide its initial comments to the draft Construction Management Agreement to Developer within thirty (30) days of receiving such draft, and the parties shall diligently complete their negotiations of the Construction Management Agreement by no later than the First Approval Deadline. If the parties are not able to agree (in their sole and absolute discretion) to the final form of the Construction Management Agreement by the First Approval Deadline, then either party shall have the right terminate to terminate this Agreement without liability upon delivery of written notice to the other.

If the parties agree to the form of Construction Management Agreement by the First Approval Deadline, the Director of Property shall submit such form for consideration by the City's Board of Supervisors on or before the thirtieth (30^{th}) day immediately following the First

Approval Deadline. If the City's Board of Supervisors does not conditionally approve such form in its sole and absolute discretion, then the parties shall seek in good faith to negotiate such changes as may be necessary to obtain the Board of Supervisor's approval for a period of not less than sixty (60) days. If the parties are unable to agree to such changes in their sole and absolute discretion, or the City's Board of Supervisors does not approve of such changed form in its sole and absolute discretion, either party shall have the right to terminate this Agreement by delivering written notice of such termination to the other party before the Agreement Ratification Date. If the form of Construction Management Agreement is conditionally approved by the City's Board of Supervisors subject to ratification on the Agreement Ratification Date (the "**Approved Form of Construction Management Agreement**"), it shall be subject to final ratification or rejection by the City's Board of Supervisors on the Agreement Ratification Date and any revisions required under all applicable City laws and regulations that are in effect at the time it is fully executed except to the extent they are waived by the City's Board of Supervisors or other City official, department, agency or commission with such waiver authority; provided, however, the Developer shall have the right, in its sole and absolute discretion, to approve of any of such revisions and, if the Developer does not approve of any of such revisions, Developer shall have the right to terminate this Agreement by delivering written notice of such termination to the City within thirty (30) days of receiving written notice of such required revisions from City and, if the Anticipated Initial Closing Date has been selected by Developer and Developer is notified by the City of such revisions to the Construction Management Agreement less than thirty (30) days prior to the Anticipated Initial Closing Date, the Anticipated Initial Closing Date shall be extended (at Developer's sole election) to a date such that gives the Developer a thirty (30) day period to decide whether or not to terminate this Agreement. If Developer does not terminate this Agreement pursuant to the foregoing sentence, then within thirty (30) days of receiving written notice of such required revision from City, City and Developer shall enter into the Approved Form of Construction Management Agreement, as may be revised under then applicable City laws and regulations, concurrently with the execution and delivery of the Ground Lease by the City and the Developer.

(b) Project Cost and Maximum Cost. Based on detailed pricing estimates performed to date, the parties estimate that the total aggregate cost incurred from time to time to entitle and develop the Station Project (collectively, the "**Project Cost**") will not exceed Thirty-Two Million One Hundred Twenty-Eight Thousand Four Hundred Twenty-Nine Dollars ($32,128,429.00) (the "**Maximum Cost**"). From the start of construction until completion of the Station Project, Developer shall, as provided in the Construction Management Agreement, review and monitor the General Contractor's monthly construction cost report of expenditures on the Station Project during the previous month (the "**Construction Cost Report**"). The Construction Cost Report shall include an update to the Station Project schedule, including critical path items. Pursuant to the terms of the Construction Management Agreement, (1) the parties will agree to review the Project Budget, as compared to actual expenditures, throughout the development to ensure that the Project Cost does not exceed the Maximum Cost, (2) if Developer reasonably believes at any point that the Project Cost will likely exceed the Maximum Cost, Developer shall notify the City of such fact and the parties shall discuss alternatives to design, overall square footage, finishes, and other items that may be changed or eliminated from the Station Project so as to not exceed the Maximum Cost, and (3) upon City's request, Developer shall provide to the City good faith detailed estimates of the cost of various proposed alternatives in order for City to initiate needed change orders to keep the Project Cost below the Maximum Cost. Notwithstanding anything stated to the contrary in this Agreement, under no circumstances whatsoever shall Developer or City be obligated to pay any Project Cost in excess of the Maximum Cost.

2.2 **Architect Contract and Construction Contract**

Developer shall use commercially reasonable efforts to include the applicable provisions of this Article 2 in the Architect Contract, the Construction Contract and all other Project

Contracts, except for any Pre-Approved Project Contract which only needs to include the applicable provisions of Section 2.9, each subject to such revisions or deletions as may be agreed to by the City in approving the Project Contract. If the Architect or the General Contractor or other contractor under a Project Contract (each, a "**Project Contractor**") refuses to include any provision, Developer shall consult with the City on how to proceed with the contract negotiations, including whether to seek Board of Supervisors approval of an ordinance exempting such provision. Notwithstanding anything stated to the contrary in this Agreement, any failure to include in any Project Contract any of the provisions provided for in this Article 2 shall not constitute a default or breach by Developer under this Agreement. However, the City shall not be required to approve any Project Contract that does not include the applicable provisions of this Article 2. In no event and under no circumstances, shall Developer be liable for any breach or default by a Project Contractor, or for a Project Contractor's failure to comply with any of the provisions of this Article 2 or applicable law including any City law. Upon a default by a Project Contractor, and following consultation with the City and upon the City's request, Developer shall use commercially reasonable efforts to take specific remedial action against the defaulting Project Contractor, including termination of the applicable Project Contract and replacement of the applicable Project Contractor. All third party costs incurred by Developer in enforcing rights and remedies against the Architect or the General Contractor shall be credited towards the Maximum Cost.

2.3 **Compliance with Laws**

Developer shall use commercially reasonable efforts to cause each Project Contractor to remain fully informed of and comply with the applicable provisions of the Charter, Municipal Code, ordinances and regulations of the City and other local agencies having jurisdiction over the work, and all federal and state laws and regulations in any manner affecting the Project Contracts, the performance of the work, or those persons engaged therein. Developer shall require compliance with, and shall use good faith efforts to ensure all construction and materials provided under the Project Contracts shall be in full accordance with, the applicable provisions of the latest laws and requirements, as the same may be amended, updated or supplemented from time to time, of the Municipal Code sections specified in the Project Contracts, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Developer and any and all persons, firms and corporations employed by or under it. The City and its Agents may at any time, following written notice to Developer, enter upon any part of the work to ascertain whether such laws, ordinances, regulations or orders are being complied with, provided that the City shall have no obligation to do so under this Agreement and no responsibility for such compliance. Architect and General Contractor shall comply with the applicable provisions of San Francisco Administrative Code Chapter 6 that are incorporated into the Architect Contract and the Construction Contract, respectively. To the extent applicable to Developer, Developer shall comply with all laws including the applicable provisions of the Charter, Municipal Code, ordinances and regulations of the City and local agencies having jurisdiction over the work.

2.4 **Completion Date**

Unless otherwise agreed to by the City, the Construction Contract shall require that (a) all work be substantially complete within nine hundred (900) consecutive calendar days following the start of work, subject to Unavoidable Delay, and (b) final completion of the work shall occur within sixty (60) consecutive calendar days after the date the City's Department of Building Inspection ("**DBI**") issues a temporary certificate of completion for the Fire Station Improvements ("**TCO**"), subject to Unavoidable Delay. Developer shall deliver written notice

of DBI's issuance of a TCO to City within three (3) business days of such issuance, and shall deliver written notice of the completion of all punch list items for the Fire Station Improvements following such TCO issuance within three (3) business days of such completion.

2.5 **Liquidated Damages**

Unless otherwise agreed to by the City, the Construction Contract shall provide that time is of the essence in all matters relating to completion of the Station Project, and that the City will suffer financial loss if the work is not completed within the time frames set forth in Section 2.4, plus any extensions allowed in accordance with the general conditions. Accordingly, the Construction Contract shall include liquidated damages (and not as a penalty) equal to $2,000 for each day of delay other than unavoidable delay (as such term shall be defined in the Construction Management Agreement), as the City's sole remedy for such delay, payable by the General Contractor to the City, for each calendar day of delay.

2.6 **Labor Requirements for Construction**

(a) Applicable Labor Laws and Agreements. Compensation and working conditions for labor performed or services rendered (excluding professional design services) under the Project Contracts shall be in accordance with the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including Section 6.22(e) and (f). Developer shall include the requirements of this Section 2.6 (collectively, the "**Labor Requirements**") in the Project Contracts (as applicable), and require Project Contractors to include the Labor Requirements in all subcontracts relating to the work, as applicable, unless otherwise agreed to by the City. The Project Contracts shall expressly acknowledge the City's right to monitor and enforce the Labor Requirements in all respects and at all times, and Developer agrees (1) to reasonably cooperate with City in all monitoring and enforcement measures initiated by City, including but not limited to the withholding of payments as directed by the City when permitted under the provisions of the Labor Requirements, with any third party costs incurred by Developer being credited against the Maximum Cost, and (2) to promptly inform the City of any known violations or known alleged violations of the Labor Requirements. A Project Contractor's violation of the Labor Requirements will not be considered a Developer default under this Agreement.

(b) Prevailing Wages. Each Project Contract shall require payment of the latest Prevailing Rate of Wage (as defined in San Francisco Administrative Code Section 6.1) in effect at the time such Project Contract is fully executed, as determined by the San Francisco Board of Supervisors, as same may be changed during the term of this Agreement. Developer shall include in each applicable Project Contract a requirement that all persons performing labor under such Project Contract shall be paid not less than the Prevailing Rate of Wage for the labor so performed. Developer shall require any Project Contractor to provide, and shall deliver to City every month during any construction period, certified payroll reports with respect to all persons performing labor in the provision of the work. Copies of the latest Prevailing Rate of Wages are on file at the Department of Public Works, City and County of San Francisco, Bureau Manager, Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, CA, 94103.

(c) Penalties. The Construction Contract shall provide for payment to the City back wages due plus fifty dollars ($50.00), for: (i) each laborer, workman, or mechanic employed in the provision of the work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or (ii) each laborer, mechanic or artisan employed in the provision of the work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five (5) days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

(d) First Source and Local Hiring. The Construction Contract shall require compliance, as applicable, with the First Source Hiring and Local Hiring requirements set forth in Exhibit E, unless otherwise agreed to by the City's Board of Supervisors and Mayor (in their sole and absolute discretion).

2.7 **Indemnity**

Developer shall use commercially reasonable efforts to have the Architect Contract include the following indemnity (or indemnity language similar in all material respects) for the benefit of the City, unless otherwise agreed to by the City:

"General. With regard to only the work performed as architect of record and engineer of record for the design of the Station Project, to the fullest extent permitted by law, Architect shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to reasonable approval of the City), the City, its boards, commissions, officers, and employees (collectively "**Indemnitees**"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) (collectively "**Damages**"), court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "**Litigation Expenses**"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Architect, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "**Liabilities**"), but this obligation to assume the immediate defense applies only to the extent that the Liabilities are actually covered by the Architect's commercial liability insurance and the provider of such insurance will respond with an immediate defense. Architect is not responsible for any Liabilities to the extent caused by the Indemnitees. Architect will only be responsible for the proportionate percentage of defense costs for such Liabilities equal to Architect's proportionate percentage of fault for such Liabilities, as determined by that court. To the fullest extent permitted by law, Architect shall indemnify and hold harmless (which may include the recovery of Litigation Expenses, but will not provide an upfront defense of them) Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses specified in this Section to the extent found to have arisen out of Architect's negligence.

Limitations. No insurance policy covering the Architect's performance under this agreement shall operate to limit the Liabilities under this Section, nor shall the amount of insurance coverage operate to limit the extent of the Liabilities. The Architect assumes no liability whatsoever for the negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

Copyright Infringement. Architect shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of services under this contract. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of this agreement.

Severability. To the extent any court of competent jurisdiction or law invalidates any word, clause, phrase, or sentence in this Section, that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this Section. All other words,

clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law."

2.8 **Rights and Remedies During Construction**

Developer shall use commercially reasonable efforts to include the following provisions (or provisions similar to the following provisions in all material respects) in the Project Contracts for the benefit of the City, unless otherwise agreed to by the City:

(a) General. The provisions of the Project Contract shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the parties to the Project Contract, or condone a breach thereunder, unless expressly agreed to by the parties in writing. All remedies provided in the Project Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

(b) No Waiver. No waiver of any breach of any provision of the Project Contract shall be held to be a waiver of any other or subsequent breach. The only waiver by the City shall be a waiver in writing that explicitly states the item or right being waived.

(c) City's Remedies for False Claims and Other Violations. A Project Contractor that fails to comply with the terms of the Project Contract, violates any provision of Local Hire and Prevailing Wages for Construction (San Francisco Administrative Code Sections 6.22 through 6.45), submits false claims, or violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the Project Contract, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code Section 6.80 et seq. Additionally, a Project Contractor that submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in Administrative Code Section 6.80 et seq.

(d) Interpretation. The Project Contract shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code.

2.9 **Other City Requirements**

Developer shall use commercially reasonable efforts to include in each Project Contract language requiring compliance, as applicable, with the provisions specified in the San Francisco Municipal Code, including but not limited to: Non Discrimination in City Contracts and Benefits Ordinance (Admin. Code Sections 12B and 12C), Tropical Hardwood and Virgin Redwood Ban (Envir. Code Sections 802(b) and 803(b)), Preservative-Treated Wood Containing Arsenic (Environment Code Chapter 13), Bicycle Storage (Planning Code Article 1.5), Green Building Requirements for City Building (Envir. Code Chapter 7), MacBride Principles (Admin. Code Section 12F.1 et seq.), Conflicts of Interest (Article III Chapter 2 of City's Campaign and Governmental Conduct Code), and Campaign Contribution Limitations (Section 1.126 of City's Campaign and Governmental Conduct Code). Developer shall comply with the above requirements insofar as they relate to Developer's work under this Agreement.

2.10 **Ground Lease for Existing City Property**

The Developer will need possession and leasehold ownership of the Existing City Property between the Initial Closing Date (as defined in Section 9.2) and the Final Closing Date to construct the Combined Project. If the Agreement Ratification Date and CEQA Date occur, then within fifteen (15) business days of Developer's written request to City and subject to the satisfaction of the conditions to the Initial Closing (as defined in Section 9.2) in Section 8.1 and

Section 8.2, the City and Developer shall enter into a ninety-nine (99) year ground lease for the Existing City Property in a form mutually agreeable to City and Developer (the "**Ground Lease**"), which shall include all applicable requirements under applicable law, including but not limited to San Francisco Charter Section 5.103 and San Francisco Administrative Code Section 23.50 *et seq*.

Within (60) days following the Effective Date, Developer shall deliver the draft Ground Lease to the City for review. The City shall provide its initial comments to the draft Ground Lease to the Developer within thirty (30) days of receiving such draft, and the parties shall diligently complete their negotiations of the Ground Lease by no later than the First Approval Deadline. If the parties are not able to agree (in their sole and absolute discretion) on the final form of the Ground Lease by the First Approval Deadline then either party shall have the right to terminate this Agreement without liability upon delivery of written notice to the other.

If the parties agree to the form of Ground Lease by the First Approval Deadline, the Director of Property shall submit such form for consideration by the City's Board of Supervisors on or before the thirtieth (30th) day immediately following the First Approval Deadline. If the City's Board of Supervisors does not approve (in its sole and absolute discretion) such form, then the parties shall seek in good faith to negotiate such changes as may be necessary to obtain the Board of Supervisor's approval for a period of not less than sixty (60) days. If the parties are unable to agree to such changes, in their sole and absolute discretion, or the City's Board of Supervisors does not approve (in its sole and absolute discretion) of such changed form, either party shall have the right to terminate this Agreement by delivering written notice of such termination to the other party before the Agreement Ratification Date. If the form of Ground Lease is approved by the City's Board of Supervisors (the "**Approved Form of Ground Lease**"), it shall be subject to any revisions required under all applicable City laws and regulations that are in effect at the time it is fully executed (even if they become effective after the date the City's Board of Supervisors approved the Approved Form of Ground Lease) except to the extent they are waived by the City's Board of Supervisors or other City official, department, agency or commission with such waiver authority, and on the Initial Closing Date, the City and Developer shall enter into the Approved Form of Ground Lease as may be revised under then applicable City laws and regulations; provided, however, the Developer shall have the right, in its sole and absolute discretion, to approve of any of such revisions and, if the Developer does not approve of any of such revisions, Developer shall have the right to terminate this Agreement by delivering written notice of such termination to the City within sixty (60) days following receipt by Developer of written notice (which written notice must expressly recite that Developer has sixty (60) days to approve or disapprove of such revisions and must reference the provisions of this Section) of any such revisions made by the City and, if the Anticipated Initial Closing Date has been selected by Developer and Developer is notified by the City of the revisions to the Approved Form of Ground Lease less than thirty (30) days prior to the Anticipated Initial Closing Date, the Anticipated Initial Closing Date shall be extended (at Developer's sole election) to a date that gives the Developer such thirty (30) day period to decide whether or not to terminate this Agreement.

3. RESOLUTION OF CERTAIN DISPUTES

3.1 Binding Arbitration.

(a) Arbitration Matters. Each of the following is an "**Arbitration Matter**" following written notice from one party to another party that a dispute exists as to such matter: (i) any proposed adjustment to the size of the Station Project under Section 1.3(c), (ii) the appropriateness, apportionment or amount of any Design and Entitlement Cost or the City's failure to approve any Design and Entitlement Cost Report, (iii) the amount of any Design and Entitlement Cost, (iv) disputes under provisions set forth in sections or exhibits to this Agreement that call for arbitration, and (vi) the City's or Developer's failure to approve any

matter in this Agreement for which it is required to act reasonably (following mediation on the matter, if either party invokes mediation to resolve the dispute), but expressly excluding the failure to approve the Architect Contract, the Construction Contract, the Construction Management Agreement, the Ground Lease, the Tower Project Easement Agreement, or the Reciprocal Easement Agreement, none of which shall be an Arbitration Matter. Following the receipt of notice of an Arbitration Matter, the parties will have thirty (30) days (or such longer time as they may agree) to attempt to resolve the Arbitration Matter through informal discussions. Notwithstanding anything stated to the contrary in this Agreement, neither the determination of whether an Event of Default has occurred nor the available remedies following an Event of Default shall be an Arbitration Matter or be subject to the provisions of this Section 3.1.

(b) Arbitration Notice. If an Arbitration Matter is not resolved by discussion as set forth in Section 3.1, then either party may submit the Arbitration Matter to a single qualified arbitrator at JAMS in the City ("**JAMS**") in accordance with the applicable rules of JAMS. The party requesting arbitration shall do so by giving notice to that effect to the other party or parties affected (the "**Arbitration Notice**"). The Arbitration Notice must include a summary of the issue in dispute and the reasons why the party giving the Arbitration Notice believes that the other party is incorrect in its or in breach.

(c) Selection of Arbitrator. The parties will cooperate with JAMS and with one another in selecting an arbitrator with appropriate expertise in the Arbitration Matter from a JAMS panel of neutrals, and in scheduling the arbitration proceedings as quickly as reasonably feasible. If the parties are not able to agree upon the arbitrator, then each will select one arbitrator, and the two selected arbitrators shall select a third arbitrator. The third arbitrator selected shall resolve such dispute in accordance with the laws of the State pursuant to the JAMS Streamlined Arbitration Rules and Procedures for disputes of $250,000 or less, and the JAMS Comprehensive Arbitration Rules and Procedures for disputes of more than $250,000 (as applicable, the "**Rules**").

(d) Arbitration Process. The parties shall bear their own attorneys' fees, costs and expenses during the arbitration proceedings, and each party shall bear one-half of the costs assessed by JAMS. The parties shall use good faith efforts to conclude the arbitration within sixty (60) days after selection of the arbitrator, and the arbitrator shall be requested to render a written decision and/or award consistent with, based upon and subject to the requirements of this Agreement as soon as reasonably possible in light of the matters in dispute. The arbitrator shall have no right to modify any provision of this Agreement. If a party chooses to submit any documents or other written communication to the arbitrator or JAMS, it shall deliver a complete and accurate copy to the other party at the same time it submits the same to the arbitrator or JAMS. Neither party shall communicate orally with the arbitrator regarding the subject matter of the arbitration without the other party present.

(e) Final Determination. Subject to this Section 3.2, the parties will cooperate to provide all appropriate information to the arbitrator. The arbitrator will report his or her determination in writing, supported by the reasons for the determination. As part of that determination, the arbitrator shall have the power to determine which party or parties prevailed, wherein the prevailing party or parties shall recover all of their reasonable fees, costs and expenses (including the fees and costs of attorneys) from the non-prevailing party or parties, to be paid within ten (10) days after the final decision of the arbitrator with regard to such fees, costs and expenses, and the arbitrator shall also determine whether the time spent for the Arbitration Matter is to be treated as Unavailable Delay. Except as provided in Sections 1286.2, 1286.4, 1286.6 and 1286.8 of the California Code of Civil Procedure, the determination by the arbitrator shall be conclusive, final and binding on the parties. Additionally, notwithstanding anything to the contrary contained in the Rules (i) the arbitrator, in deciding any Claim, shall base his or her decision on the record and in accordance with this Agreement and applicable law,

(ii) in no event shall the arbitrator make any ruling, finding or award that does not conform to the terms and conditions of this Agreement, is not supported by the weight of the evidence, or is contrary to statute, administrative regulations or established judicial precedents, (iii) the arbitration award shall be a factually detailed, reasoned opinion stating the arbitrator's findings of fact and conclusions of law, and (iv) any such arbitration shall be held in San Francisco, California, unless the parties mutually agree upon some other location. By agreeing to this provision, the parties are waiving all rights to a trial by judge or jury with respect to any Arbitration Matter. The arbitrator's decision and/or award may be entered as a judgment in any court having competent jurisdiction and shall constitute a final judgment as between the parties and in that court.

3.2 **Non-Binding Mediation**

(a) Mediation Matter. Each of the following is a "**Mediation Matter**" following written notice from one party to another party that a dispute exists as to such matter: (i) the Director of Property's failure to approve the Architect Contract or the Construction Contract, (ii) changes to the Station Project or the Project Budget as required to keep the Project Cost below the Maximum Cost, and (iii) the City's or Developer's failure to approve any other matter as to which it is required by this Agreement to be reasonable.

(b) Mediation Request. A party may request non-binding mediation by delivering a written request for mediation ("**Mediation Request**") to the other party. The Mediation Request must include a summary of the issue in dispute and the position of the parties, together with any backup information or documentation it elects to provide. Within fifteen (15) days after receipt of the Mediation Request, the responding party may agree to meet and confer promptly with the requesting party to attempt to resolve the matter. In the absence of such agreement, or if the meet and confer does not resolve the matter promptly, the party who requested approval may submit the matter for mediation to JAMS in the City and County of San Francisco.

(c) Selection of Mediator and Process. The parties will cooperate with JAMS and with one another in selecting a mediator from a JAMS panel of neutrals and in scheduling the mediation proceedings as quickly as feasible. The parties agree to participate in the mediation in good faith. Neither party may commence or if commenced, continue, a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session. The parties will each pay their own costs and expenses in connection with the mediation, and the party that requested mediation will pay all costs and fees of the mediator. Without limiting the foregoing, the provisions of Sections 1115 through 1128 of the California Evidence Code, inclusive, will apply in connection with any mediation.

(d) Use of Evidence. The provisions of Sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during the mediation or arbitration.

4. PROPERTY EXCHANGE

4.1 **Property Included in Sale**

(a) Upon no less than fifteen (15) business days' prior written notice delivered by Developer to the City that Developer wishes to proceed with the Initial Closing on the Ground Lease in accordance with the provisions of Section 9.2(a) herein, and following satisfaction (or waiver) of the City's Conditions Precedent and Developer's Conditions Precedent as to the Anticipated Initial Closing Date (or on such other date to which the Initial Closing shall be extended as provided in this Agreement) and subject to the terms, covenants and conditions of this Agreement, the Initial Closing shall occur and City agrees to sell and convey a leasehold interest in and to the Existing City Property to the Developer pursuant to the terms of the Ground

Lease, and Developer agrees to purchase and acquire a leasehold interest in the Existing City Property pursuant to the terms of the Ground Lease.

(b) Upon satisfaction (or waiver) of the City's Conditions Precedent and Developer's Conditions Precedent as they relate to the Anticipated Final Closing Date (or on such other date to which the Final Closing shall be extended as provided in this Agreement) and subject to the terms, covenants and conditions of this Agreement, the Final Closing shall occur and Developer agrees to sell and convey fee title to the Fire Station Property to City and City agrees to sell and convey fee title to the Tower Property (defined below) to Developer.

(c) The "**Fire Station Property**" shall collectively mean the following:

(i) the real property consisting of the New City Parcel, as improved by the Station Project improvements, and any other improvements and fixtures, on the New City Parcel (the "**Fire Station Improvements**");

(ii) the Developer's interest in Assumed Contracts (as defined in Section 6.4 below) that Developer and the City agree should be assigned by Developer and assumed by the City at Final Closing, if any;

(iii) any and all rights, privileges, and easements incidental or appurtenant to the New City Parcel or Fire Station Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the New City Parcel, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the New City Parcel, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the New City Parcel or Fire Station Improvements, and any and all of Developer's right, title and interest in and to all roads and alleys adjoining or servicing the New City Parcel, subject to the Reciprocal Easement Agreement and the Tower Project Easement Agreement (collectively, the "**Fire Station Appurtenances**");

(iv) all personal property owned by Developer located on or in or used in connection with the New City Parcel or Fire Station Improvements as of the Final Closing Date (the "**Fire Station Personal Property**"); and

(v) any intangible personal property now or hereafter owned by Developer and used in the ownership, use or operation of the New City Parcel, Fire Station Improvements or Fire Station Personal Property, to the extent assignable to the City, and including the Assumed Contracts (collectively, the "**Fire Station Intangible Property**").

(d) The "**Tower Property**" shall collectively mean the following:

(i) the real property consisting of the Existing City Property, together with the City's interest, if any, in the improvements and fixtures on the Existing City Property on the Final Closing Date (the "**Tower Improvements**");

(ii) any and all rights, privileges, and easements incidental or appurtenant to the Existing City Property or Tower Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Existing City Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Existing City Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Existing City Property or Tower Improvements, and any and all of the City's right, title and interest in its proprietary interest as fee owner of the Existing City Property in and to all roads and alleys adjoining or servicing the New City Parcel (collectively, the "**Tower Appurtenances**");

(iii) all personal property owned by City located on or in or used in connection with the Existing City Property or Tower Improvements as of the Initial Closing Date or Final Closing Date (the "**Tower Personal Property**"); and

(iv) any intangible personal property owned by City in its proprietary interest as fee owner of the Existing City Property immediately prior to the Final Closing and used in the ownership, use or operation of the Existing City Property, Tower Improvements or Tower Personal Property, to the extent assignable to the Developer (collectively, the "**Tower Intangible Property**").

4.2 **Easements**

(a) The parties agree that if Final Closing occurs, City shall grant the Developer an easement that encumbers the New City Parcel for the benefit of the New Developer Parcel for (i) an extension of the Tower Project, if applicable, and (ii) a garage ramp on the southwest corner of the New City Parcel, both as generally depicted on the attached Exhibit F, subject to the terms of a mutually agreeable easement agreement (the "**Tower Project Easement Agreement**"). Within sixty (60) days following the Effective Date, Developer shall deliver a draft Tower Project Easement Agreement to the City for review and the parties shall diligently complete their negotiations on the form of Tower Project Easement Agreement within the five (5) month period immediately following such delivery. If the parties are not able to agree (each in their sole and absolute discretion) to the form of Tower Project Easement Agreement during such five (5) month period, then either party shall have the right to terminate this Agreement by delivering written notice of such termination to the other party within ten (10) business days following the expiration of such five (5) month period. If the parties agree to the form of Tower Project Easement Agreement and it is conditionally approved by the City's Board of Supervisors (acting in its sole and absolute discretion) subject to ratification on the Agreement Ratification Date, Developer shall have the right to update and amend and modify the Tower Project Easement Agreement with the City's approval (which approval may be withheld in its sole and absolute discretion) at any time, and from time to time, no less than ninety (90) days prior to the Initial Closing. If the City is not able to agree upon (in its sole and absolute discretion) any such amendment or modification to the Tower Project Easement Agreement, then the parties will execute the Tower Project Easement Agreement without such unapproved amendment or modification at the Final Closing or, at Developer's election (in its sole and absolute discretion), Developer shall have the right to terminate this Agreement due to such unapproved amendment or modification prior to the Initial Closing.

The form of Tower Project Easement Agreement shall be subject to ratification or rejection by the City's Board of Supervisors on the Agreement Ratification Date and any revisions required under all applicable City laws and regulations that become effective between the date the City's Board of Supervisors approved it and the Final Closing Date, except to the extent they are waived by the City's Board of Supervisors or other City official, department, agency or commission with such waiver authority; provided, however, the Developer shall have the right, in its sole and absolute discretion, to approve of any of such revisions and, if the Developer does not approve of any of such revisions, Developer shall have the right to terminate this Agreement by delivering written notice of such termination to the City before the Final Closing Date.

(b) The parties agree that if Final Closing occurs, the parties shall execute an easement agreement that encumbers and benefits the New City Parcel and the New Developer Parcel for vehicular and pedestrian access to the subsurface parking garage on the New City Parcel and the New Developer Parcel, together with the right to maintain and repair the garage, as generally depicted on the attached Exhibit G, subject to the terms of a mutually agreeable easement agreement (the "**Reciprocal Easement Agreement**"). Within sixty (60) days following the Effective Date, Developer shall deliver a draft Reciprocal Easement Agreement to

the City for review and the parties shall diligently complete their negotiations of the form of Reciprocal Easement Agreement within the five (5) month period immediately following such delivery. If the parties are not able to agree (each in their sole and absolute discretion) to the form of the Reciprocal Easement Agreement during such five (5) month period, then either party shall have the right to terminate this Agreement by delivering written notice of such termination to the other party within ten (10) business days following the expiration of such five (5) month period. Developer shall have the right to update and amend and modify the Reciprocal Easement Agreement prior to the Initial Closing with the City's approval (which approval may be withheld in its sole and absolute discretion) at any time, and from time to time, no less than ninety (90) days prior to the Initial Closing. If the City does not agree upon (in its sole and absolute discretion) any such proposed amendment or modification to the Reciprocal Easement Agreement, then Developer shall have the right to terminate this Agreement prior to the Initial Closing.

The form of Reciprocal Easement Agreement shall be subject to approval by the City's Board of Supervisors on the Agreement Ratification Date and any revisions required under all applicable City laws and regulations that become effective between the date the City's Board of Supervisors approved it and the Final Closing Date except to the extent they are waived by the City's Board of Supervisors or other City official, department, agency or commission with such waiver authority; provided, however, the Developer shall have the right, in its sole and absolute discretion, to approve of any of such revisions and, if the Developer does not approve of any of such revisions, Developer shall have the right to terminate this Agreement by delivering written notice of such termination to the City before the Final Closing Date.

(c) The parties acknowledge the Tower Project Easement Agreement and the Reciprocal Easement Agreement will require the approval of the City's Board of Supervisors and Mayor, each acting in their sole discretion. If there is a proposed modification to the Tower Project Easement Agreement and the Reciprocal Easement Agreement following any such approval that materially increases City's costs or liabilities or decreases City's benefits will require further approval of the City's Board of Supervisors and Mayor, each acting in their sole discretion. If the Director of Property approves such a proposed material modification prior to the Initial Closing but the City's Board of Supervisors and Mayor fail to approve of the same, then either party to this Agreement shall have the right to terminate this Agreement by delivering written notice of such termination to the other party prior to the Initial Closing. Any proposed material modification after the Initial Closing will require the Director of Property's approval (not to be unreasonably withheld) and the City's Board of Supervisors and Mayor (each in their sole discretion).

5. EXCHANGE VALUES

5.1 Payment of Purchase Price for Existing City Property

The parties acknowledge and agree that the purchase price ("**Purchase Price**") for a leasehold interest in the Existing City Property under the terms of the Ground Lease and the right to purchase the fee interest in the Existing City Property on the terms of this Agreement is equal to the Maximum Cost and that payment of all, or substantially all, of the Purchase Price will be accomplished through Developer's development and transfer to the City of the Fire Station Property such that all Project Costs incurred by Developer in accordance with the terms and conditions of this Agreement shall be credited towards the Purchase Price. Prior to Final Closing, the parties shall make the final determination of the total Project Cost. If the total Project Cost is less than $25,500,000 then, concurrently with the Final Closing, the Developer shall pay the City an amount (the "**Purchase Price Shortfall**") equal to the amount, if any, by which the sum of $25,500,000 exceeds the Project Cost. For avoidance of doubt, if the total Project Cost is less than the Maximum Cost, but equal to or exceeds $25,500,000, then there will be no Purchase Price Shortfall. When possible and practical, Developer will maintain separation

of the Design and Entitlement Costs for the Station Project and for the Tower Project and the construction costs for the Station Project and for the Tower Project, and where costs are appropriately attributable to both, they will be divided in accordance with the Apportionment. If the City and Developer are not able to agree upon the amount of the Project Costs incurred by Developer the same shall be resolved as an Arbitration Matter pursuant to the provisions of Section 3.1 herein.

5.2 **Additional Payment**

In further consideration of City's agreement to exchange the Existing City Property for the New City Parcel on the terms of this Agreement, Developer agrees to pay the Additional Payment (defined as follows) to City at the Final Closing. The "**Additional Payment**" shall mean an amount equal to (A) the fee that would be calculated as of the first construction document for the Tower Project under San Francisco Planning Code Section 415.5(b), as it may be amended or replaced, if the Tower Project had at least twenty-five (25) Owned Units (as defined in San Francisco Planning Code Section 415.2) and a Gross Floor Area (as defined in San Francisco Planning Code Section 401) of 73,375 square feet of residential use, less (B)(i) the fee payable for the Tower Project under San Francisco Planning Code Section 413 et seq, calculated as of the first construction document for the Tower Project, (ii) any fee already paid by Developer for the Tower Project under San Francisco Planning Code Section 415 et seq, and (iii) One Million Six Hundred Thousand Dollars ($1,600,000).

5.3 **Funds**

The Additional Payment, the Purchase Price Shortfall, and all other amounts payable under this Agreement, shall, except as may be otherwise provided in this Agreement, be paid in legal tender of the United States of America, in cash or by wire transfer of immediately available funds to Title Company (as defined below), as escrow agent.

6. TITLE TO THE PROPERTIES

6.1 **Conveyance of Title**

(a) At the Initial Closing, the City shall convey to the Developer, or its nominee (subject to such nominee's complying with the provisions of Section 14.3), leasehold title to the Existing City Property (including all improvements situated thereon), through the execution and delivery of the Ground Lease, subject to the Accepted Developer Conditions of Title.

(b) At the Final Closing, Developer shall convey to City, or its nominee (subject to such nominee's complying with the provisions of Section 14.3), fee simple title to the New City Parcel, the Fire Station Improvements and the Fire Station Appurtenances, by duly executed and acknowledged quitclaim deed in the form attached hereto as Exhibit H-1 (the "**Fire Station Deed**"), subject to the Accepted City Conditions of Title.

(c) At the Final Closing, City shall convey to Developer, or its nominee (subject to such nominee's complying with the provisions of Section 14.3), fee simple title to the Existing City Property, the Tower Appurtenances and any interest the City has in the Tower Improvements, by duly executed and acknowledged quitclaim deed in the form attached hereto as Exhibit H-2 (the "**City Property Deed**"), subject to the Accepted Developer Conditions of Title.

(d) If the Title Company is not able to issue the City Title Policy or the Developer Fee Title Policy because the City Property Deed or the Fire Station Deed is on the form of a quitclaim deed, the City Property Deed and the Fire Station Deed will be changed to be customary grant deeds.

6.2 **Title Insurance**

(a) Delivery of title in accordance with Section 6.1(a) shall be evidenced by the commitment of Chicago Title Insurance Company (the "**Title Company**") to issue to Developer, or its nominee (subject to such nominee's complying with the provisions of Section 14.3), an ALTA extended coverage owner's policy of title insurance (2006 Form) (the "**Developer Leasehold Title Policy**") in an amount to be mutually agreed upon by the Developer and the City on or before the First Approval Deadline, insuring leasehold title to the Existing City Property (including all improvements located thereon) in the Developer or such nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants, and all other exceptions, liens and encumbrances, except for the exceptions listed in Exhibit I-1 and any other exceptions approved in writing by Developer before the Initial Closing (the "**Accepted Developer Conditions of Title**"). The Developer Leasehold Title Policy shall provide full coverage against mechanics' and materialmen's liens and shall contain an affirmative endorsement that there are no violations of restrictive covenants affecting the Existing City Property and such special endorsements as the Developer may reasonably request.

(b) Delivery of title in accordance with Section 6.1(b) shall be evidenced by the commitment of the Title Company to issue to City, or its nominee, an ALTA extended coverage owner's policy of title insurance (2006 Form) (the "**City Title Policy**") in an amount to be mutually agreed upon by the Developer and the City on or before the First Approval Deadline, insuring fee simple title to the New City Parcel, the Fire Station Appurtenances and the Fire Station Improvements in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants, and all other exceptions, liens and encumbrances except for the Tower Project Easement Agreement, the Reciprocal Easement Agreement, and the Accepted City Conditions of Title (defined as follows). The "**Accepted City Conditions of Title**" means the exceptions listed in Exhibit I-2, and such other exceptions arising from the development, operation and/or use of the Combined Project as may be approved by the City in writing prior to the Final Closing Date, which approval shall not be unreasonably withheld (the "**Accepted City Conditions of Title**"). The City Title Policy shall provide full coverage against mechanics' and materialmen's liens, and contain an affirmative endorsement that there are no violations of restrictive covenants affecting the Fire Station Property and such special endorsements as City may reasonably request.

(c) Delivery of title in accordance with Section 6.1(c) shall be evidenced by the commitment of Title Company to issue to Developer, or its nominee, an ALTA extended coverage owner's policy of title insurance (2006 Form) (the "**Developer Fee Title Policy**") in an amount to be mutually agreed upon by the Developer and the City on or before the First Approval Deadline, insuring fee simple title to the Existing City Property, the Tower Appurtenances and the Tower Improvements in the Developer, or its nominee, subject to the Reciprocal Easement Agreement, the Accepted Developer Conditions of Title, and any exceptions approved in writing by Developer before the Final Closing or caused by the acts of Developer or its Agents, but free of the liens of any and all other deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants, or any other exceptions, liens and encumbrances resulting from any actions by City (or the City's failure to act to the extent it is required to do so under the terms of the Ground Lease) as the fee owner of the Existing City Property after the Initial Closing.

6.3 **Bills of Sale**

At the Final Closing, (i) Developer shall transfer title to the Fire Station Personal Property to City by bill of sale in the form mutually approved by the parties (the "**Fire Station**

Bill of Sale"), such title to be free of any liens, encumbrances or interests, and (ii) City shall transfer title to any of the Tower Personal Property owned by City to the Developer, by bill of sale in the form mutually approved by the parties (the "**Tower Bill of Sale**"), such title to be free of any liens, encumbrances or interests. In addition, at the Initial Closing, a bill of sale similar to the Tower Bill of Sale will be executed by the City pursuant to which the City shall transfer to Developer any personal property located at the Existing City Property as of the Initial Closing, free and clear of any liens, encumbrances or interests.

6.4 Assignment of Contracts and Intangibles

(a) At the Final Closing, Developer shall transfer title to the Fire Station Intangible Property to City by an assignment in the form mutually approved by the parties (the "**Developer Assignment of Intangible Property**"). As part of the Developer Assignment of Intangible Property, Developer shall assign to the City all of Developer's rights, title and interest in contracts approved by the City during the term of this Agreement that Developer and the City expressly agree should be assigned to the City at the Final Closing (collectively, the "**Assumed Contracts**"). All Project Contracts, including the Architect Contract and the Construction Contract, together with all warranties and guarantees under the Project Contracts, will be assigned to the City upon the completion of the Station Project, without further consent of the Project Contractor and without additional payment to the Project Contractor, as set forth in the Construction Management Agreement. Any such contracts agreed to be assumed by City at the Final Closing shall be included in the Developer Assignment of Intangible Property. At or before the Final Closing, Developer shall terminate any contracts or agreements (expressly excluding any Project Contracts or agreements that are Accepted City Conditions of Title) not agreed to be assumed by City, without any liability to City. During the term of this Agreement, Developer shall use commercially reasonable efforts to monitor and enforce all of Developer's rights under the Assumed Contracts and any Project Contracts, and shall notify the City as soon as it learns of any material default or material work defect or deficiency.

(b) At the Final Closing, City shall transfer title to the Tower Intangible Property to Developer by an assignment in the form mutually approved by the parties (the "**City Assignment of Intangible Property**").

7. DUE DILIGENCE INVESTIGATIONS; RELEASE

7.1 Due Diligence Materials and Representations

Developer acquired the Existing Developer Property on June 17, 2019, and in connection therewith, Developer performed standard due diligence and obtained or procured various environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; site plans; and inspection reports by engineers or other licensed professionals (collectively, the "**Developer Documents**"). Developer represents and warrants that, to Developer's actual knowledge, all of the material Developer Documents in Developer's possession are listed in Exhibit J-1, and, to Developer's actual knowledge, Developer has delivered true and complete copies of the Developer Documents listed in Exhibit J-2 to the City. At the Final Closing, Developer shall assign (to the extent assignable) to the City all of Developer's rights, warranties, guaranties, and interests in the Developer Documents to the extent they relate to the New City Parcel or the Station Project.

Developer acknowledges it has received copies of an amended preliminary report for the Existing City Property by Ticor Title Company of California for Order No. 00580887-988 and dated September 20, 2019, and amended October 8, 2019 (the "**City Document**"). City represents and warrants that, to City's actual knowledge, this is the only material document in possession of the Director of Property with respect to the condition of the Existing City Property and is a true and complete copy.

7.2 **Due Diligence Period**

(a) From the Effective Date through the First Approval Deadline (the "**Due Diligence Period**"), and subject to the provisions of Section 7.3 below, the City shall have a full opportunity to investigate the portion of the Existing Developer Property that is proposed for the New City Parcel, either independently or through agents of the City's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Existing Developer Property as the City deems fit, as well as the suitability of the Existing Developer Property for a fire station.

City shall have the right (in its sole and absolute discretion) to terminate this Agreement without liability at any time during the Due Diligence Period upon written notice to Developer. If City does not terminate this Agreement during the Due Diligence Period, then following the expiration of the Due Diligence Period, the City shall be deemed to have approved of the conditions of the New City Parcel existing, and all items which could reasonably be discovered, before the expiration of the Due Diligence Period. Developer agrees to keep the City informed of any and all matters of significance with respect to the Existing Developer Property during the term of this Agreement, and to provide such additional information relating to the Existing Developer Property that is specifically reasonably requested by City of Developer from time to time.

(b) During the Due Diligence Period and subject to the provisions of Section 7.3 below, the Developer shall have a full opportunity to investigate the Existing City Property, either independently or through agents of the Developer's own choosing, to determine (i) all matters relating to title including, without limitation, the existence, quality, nature and adequacy of City's interest in the Existing City Property and the existence of physically open and legally sufficient access to the Existing City Property; (ii) the zoning and other legal status of the Existing City Property, including, without limitation, the compliance of the Existing City Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes; (iii) the quality, nature, adequacy and physical condition of the Existing City Property, including, but not limited to, the structural elements, foundation, roof, interior, landscaping, parking facilities, and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and all other physical and functional aspects of the Existing City Property, provided Developer obtains City's prior written approval to any invasive testing; (iv) the quality, nature, adequacy, and physical, geological and environmental condition of the Existing City Property (including soils and any groundwater through invasive testing approved by the City), and the presence or absence of any Hazardous Materials (as defined in Section 11.1) in, on, under or about the Existing City Property or any other real property in the vicinity of the Existing City Property; and (v) the suitability of the Existing City Property for the Tower Project, the economics and development potential, if any, of the Existing City Property, and all other matters of material significance affecting the Existing City Property.

Developer shall have the right (in its sole and absolute discretion) to terminate this Agreement without liability at any time during the Due Diligence Period upon written notice to City. If Developer does not terminate this Agreement during the Due Diligence Period, then following the expiration of the Due Diligence Period, the Developer shall be deemed to have approved of the existing conditions of the Existing City Property and all items which could reasonably be discovered on or before the Due Diligence Period. City agrees to keep the Developer informed of any and all matters of significance with respect to the Existing City Property during the term of this Agreement, and to provide such additional information relating

to the Existing City Property that is specifically and reasonably requested by Developer of City from time to time.

7.3 **Entry**

(a) Developer shall afford the City and its Agents reasonable access to the Existing Developer Property and all books and records relating to the condition of the Existing Developer Property at all times during the Due Diligence Period; provided, however, the City shall not be entitled to undertake any invasive inspection of the Existing Developer Property without Developer's prior consent. The City hereby agrees to indemnify and hold Developer harmless from any damage or injury to persons or property caused by the actions or inactions of City or its Agents during any such entries onto the Existing Developer Property pursuant to this Agreement, except to the extent such damage or injury is caused by the acts or omissions of Developer or any of its Agents. The foregoing indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions except to the extent the City aggravates any pre-existing environmental conditions on, in, under or about the Existing Developer Property. The provisions of this Section shall survive the Final Closing and the termination of this Agreement for the applicable statute of limitations.

(b) Prior to the Initial Closing, City shall afford the Developer and its Agents reasonable access to the Existing City Property and all books and records of City's Real Estate Division relating to the condition of the Existing City Property, at all reasonable times and with no less than five (5) business days prior notice from Developer to City; provided, however, the Developer shall not be entitled to undertake any invasive inspection of the Existing City Property prior to the Initial Closing Date without the City's prior consent. The Developer acknowledges the Existing City Property is a fire station and its investigations will be subject to reasonable restrictions to avoid any interference with its operations. The Developer hereby agrees to indemnify and hold City harmless from any damage or injury to persons or property caused by the actions or inactions of Developer or its Agents during any such entries onto the Existing City Property or at the offices of City's Real Estate Division pursuant to this Agreement, except to the extent such damage or injury is caused by the acts or omissions of City or any of its Agents. The foregoing indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions except to the extent the Developer aggravates any pre-existing environmental conditions on, in, under or about the Existing City Property. The provisions of this Section shall survive the Initial Closing, the Final Closing and the termination of this Agreement for the applicable statute of limitations.

7.4 **City Release**

By proceeding with the Final Closing in accordance with the terms and conditions of this Agreement, concurrently with the Final Closing, the City shall be deemed to have made its own independent investigation of the New City Parcel, the Fire Station Improvements, and the Developer Documents and the presence of any Hazardous Materials in or on the New City Parcel as City deems appropriate. Accordingly, subject to the representations and warranties of Developer expressly set forth in Section 11.1, the City, on behalf of itself and all of its officers, directors, shareholders, employees, representatives and affiliated entities (collectively, the "**City Releasers**") hereby, effective concurrently with the Final Closing, expressly waives and relinquishes any and all rights and remedies the City Releasers may now or hereafter have against Developer, its successors and assigns, partners, shareholders, officers and/or directors (the "**Developer Parties**"), whether known or unknown, which may arise from or be related to (a) the Developer Documents, (b) the physical condition, quality, quantity and state of repair of the New City Parcel and the Fire Station Improvements and the prior operation of the same, (c) the New City Parcel and Fire Station Improvements compliance or lack of compliance with any federal, state or local laws or regulations (including, without limitation, the failure of the Developer to comply with any energy disclosure requirements), and (d) any past or present

existence of Hazardous Materials in or on the New City Parcel or with respect to any past or present violation of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage or disposal of Hazardous Materials in or around the New City Parcel, including, without limitation, (i) any and all rights and remedies the City Releasers may now or hereafter have under the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act, all as amended, and any similar state, local or federal environmental law, rule or regulation, and (ii) any and all claims, whether known or unknown, now or hereafter existing, with respect to the New City Parcel under Section 107 of CERCLA (42 U.S.C.A. §9607).

7.5 **Developer Release**

By proceeding with the Initial Closing, Developer shall be deemed to have made its own independent investigation of the Existing City Property and the presence of any Hazardous Materials in or on the Existing City Property as Developer deems appropriate and all matters related to the Regulatory Approvals. Accordingly, Developer, on behalf of itself and all of its officers, directors, shareholders, employees, representatives and affiliated entities (collectively, the "**Developer Releasers**"), effective concurrently with the Initial Closing, expressly waives and relinquishes any and all rights and remedies the Developer Releasers may now or hereafter have against the City, its successors and assigns, officers, members, commissioners and/or employees (the "**City Parties**"), whether known or unknown, which may arise from or be related to (a) the Regulatory Approvals, including all acts and omissions by the City Parties in granting, conditioning or denying any City approval relating to the Station Project or the Tower Project, (b) the physical condition, quality, quantity and state of repair of the Existing City Property and the prior management and operation of the Existing City Property, (c) the Existing City Property's compliance or lack of compliance with any federal, state or local laws or regulations (including, without limitation, the failure of City to comply with any energy disclosure requirements), and (d) any past or present existence of Hazardous Materials in or on the Existing City Property or with respect to any past or present violation of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage or disposal of Hazardous Materials in or around the Existing City Property, including, without limitation, (i) any and all rights and remedies the Developer Releasers may now or hereafter have under the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act, all as amended, and any similar state, local or federal environmental law, rule or regulation, and (ii) any and all claims, whether known or unknown, now or hereafter existing, with respect to the Existing City Property under Section 107 of CERCLA (42 U.S.C.A. §9607).

7.6 **General Release Under Section 1542**

WITH RESPECT TO THE RELEASES IN SECTION 7.4 AND SECTION 7.5, CITY, ON BEHALF OF ITSELF AND THE OTHER CITY RELEASERS, AND DEVELOPER, ON BEHALF OF ITSELF AND THE OTHER DEVELOPER RELEASERS, EACH ACKNOWLEDGE THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH IS SET FORTH BELOW:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, THE CITY, ON BEHALF OF ITSELF AND THE OTHER CITY RELEASERS, AND DEVELOPER, ON BEHALF OF ITSELF AND THE OTHER DEVELOPER RELEASERS, WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS THAT ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

City's Initials: _____ Developer's Initials: _____

THE FOREGOING WAIVERS, RELEASES AND AGREEMENTS SHALL SURVIVE THE INITIAL CLOSING AND THE FINAL CLOSING, AS APPLICABLE, AND THE EXECUTION OF THE GROUND LEASE AND RECORDATION OF THE FIRE STATION DEED AND THE CITY PROPERTY DEED (WITHOUT LIMITATION) AND SHALL NOT BE DEEMED MERGED INTO THE GROUND LEASE UPON ITS FULL EXECUTION OR INTO THE FIRE STATION DEED OR THE CITY PROPERTY DEED UPON THEIR RECORDATION. THE FOREGOING RELEASES SHALL NOT APPLY TO ANY RIGHTS THE PARTIES MAY HAVE UNDER THIS AGREEMENT TO THE EXTENT SUCH RIGHTS EXPRESSLY SURVIVE THE INITIAL CLOSING OR THE FINAL CLOSING, AS APPLICABLE, OR AGAINST GENERAL CONTRACTOR OR ARCHITECT UNDER THE TERMS OF THE CONSTRUCTION CONTRACT OR THE ARCHITECT CONTRACT.

8. CLOSING CONDITIONS

8.1 City's Conditions to Initial Closing and Final Closing

The following are conditions precedent to the City's obligation to consummate the Initial Closing and the Final Closing, as applicable, as provided under this Agreement (collectively, "**City's Conditions Precedent**"):

(a) As to the Initial Closing, the adoption of a resolution or ordinance ratifying this Agreement by the City's Board of Supervisors and Mayor on the Agreement Ratification Date.

(b) As to the Initial Closing, the adoption of a resolution or ordinance approving the final forms of the Architect Contract, Construction Contract, the Construction Management Agreement, and the Ground Lease, and the forms of the Tower Project Easement Agreement and the Reciprocal Easement Agreement by the City's Board of Supervisors and Mayor on or before the Agreement Ratification Date.

(c) As to the Final Closing, there shall be no changes to the forms of the Tower Project Easement Agreement or the Reciprocal Easement Agreement from the Agreement Ratification Date that materially reduce City's benefits or materially increase City's obligations, unless the City's Board of Supervisors and Mayor have adopted adoption a resolution or ordinance authorizing such changes.

(d) As to the Final Closing, the City's approval of the legal description of the New City Parcel.

(e) As to the Final Closing, City's review, approval, and acceptance of completed construction of the Fire Station Improvements on the New City Parcel in compliance with the Construction Management Agreement, issuance of a TCO with respect to the Fire Station Improvements, and the New City Parcel being a separate legal parcel.

(f) As to the Final Closing, the Title Company's commitment to issue at the Final Closing to the City or its nominee the City Title Policy.

(g) As to the Final Closing, Developer's delivery of an ALTA survey of the New City Parcel prepared by a licensed surveyor (the "**Survey**"). The Survey shall be reasonably acceptable to, and certified to, the City and Title Company and in sufficient detail for Title Company to provide the City Title Policy without any boundary, encroachment or survey exceptions that would have a Material Adverse Effect.

(h) As to the Final Closing, City's review and approval of the Assumed Contracts to be assigned to the City under the Developer's Assignment of Intangible Property. Without the City's approval (not to be unreasonably withheld), and except as otherwise expressly permitted under this Agreement, there shall be no contracts other than the Assumed Contracts, the Project Contracts and the Accepted City Conditions of Title affecting or encumbering the New City Parcel, and no third party occupancy rights, as of the Final Closing Date. At the time of Final Closing there will be no outstanding written or oral contracts made by Developer for any of the Fire Station Improvements that have not been fully paid for and Developer shall cause to be discharged (or bonded over) all mechanics' or materialmen's liens arising from any labor or materials furnished to the New City Parcel before the time of Final Closing. Except as may be approved by the City (which approval shall not be unreasonably withheld), there shall be no obligations in connection with the New City Parcel which will be binding upon City after Closing except for the Accepted City Conditions of Title and the Assumed Contracts.

(i) As to the Initial Closing, there shall be no change in the physical and environmental condition of the New City Parcel since the date of the expiration of the Due Diligence Period that would have a Material Adverse Effect and, as to the Initial Closing and the Final Closing, there shall be no change in the physical and environmental condition of the New City Parcel since the date of the expiration of the Due Diligence Period and caused by Developer or any of Developer's Agents (subject to the changes contemplated and required for the Station Project) that would have a Material Adverse Effect.

(j) As to the Initial Closing and the Final Closing, no Developer Event of Default shall exist (and no notice of default shall have been given by the City that remains uncured) and all of Developer's representations and warranties contained in or made pursuant to this Agreement shall be true and correct in all material respects or, if such is not the case (i.e., the existence of an Event of Default or a representation or warranty is untrue), such failure does not have a Material Adverse Effect. At the Initial Closing and Final Closing, Developer shall deliver to the City a certificate in the form attached hereto as Exhibit K-1 as to the Initial Closing and in the form attached hereto as Exhibit K-2 as to the Final Closing, certifying whether each of Developer's representations and warranties contained in this Agreement continue to be true and correct in all material respects as of the Initial Closing Date and as of the Final Closing Date, as applicable.

(k) As to the Initial Closing and the Final Closing, Developer shall have delivered all documents and monies to Escrow required for the Initial Closing and the Final Closing, as applicable, including delivery of the closing documents required to be delivered in accordance with this Agreement by the City.

(l) As to the Initial Closing and the Final Closing, there shall be no litigation or administrative agency or other governmental proceeding that has been filed or threatened against the Developer, the Existing City Property, the New City Parcel or this Agreement which, after the Initial Closing or the Final Closing, could have a Material Adverse Effect.

(m) As to the Initial Closing, the deed of trust, assignment of leases and rents, security agreement, and fixture filing made by Developer for the benefit of SPT CA Fundings 2, LLC,

recorded in the Official Records of San Francisco County as Document No. 2019-K783230-00 on June 18, 2019, shall be fully reconveyed.

(n) As to the Initial Closing, all Regulatory Approvals have been granted and are final, binding, and non-appealable.

The City's Conditions Precedent contained in this Section 8.1 are solely for the benefit of City. If any City's Condition Precedent is not satisfied as to the Initial Closing or Final Closing, the City shall have the right in its sole discretion to waive in writing the City's Condition Precedent in question and proceed with the Initial Closing or Final Closing. The waiver of any City's Condition Precedent shall not relieve Developer of any liability or obligation with respect to any covenant or agreement of Developer (except that, if the Final Closing occurs, any breached representation or warranty of which City has knowledge will be deemed waived and shall not survive the Final Closing).

If the sale of the New City Parcel is not consummated because of an Event of Default by Developer or if a City Condition Precedent cannot be fulfilled because Developer frustrated such fulfillment by some bad faith act or bad faith omission, the City may exercise all rights and remedies available, following applicable notice and cure periods, as set forth in, and subject to the provisions of, Section 9.6.

8.2 **Developer's Conditions to Initial Closing and Final Closing**

The following are conditions precedent to the Developer's obligation to consummate the Initial Closing and the Final Closing, as applicable, as provided under this Agreement (collectively, "**Developer's Conditions Precedent,**" and, together with the City's Conditions Precedent, the "**Conditions Precedent**"):

(a) The satisfaction of the conditions referenced in Sections 8.1(a) and 8.1(b) above as to the Initial Closing, and satisfaction of the conditions referenced in Section 8.1(c) above as to the Final Closing.

(b) As to the Initial Closing, the Title Company's commitment to issue to the Developer or its permitted nominee the Developer Leasehold Title Policy at the Initial Closing, and as to the Final Closing, the Title Company's commitment to issue to the Developer or its permitted nominee the Developer Fee Title Policy at the Final Closing.

(c) As to the Initial Closing, Developer's approval of the final forms of the Ground Lease, Construction Management Agreement, Architect Contract, the Construction Contract, and the form of the Tower Project Easement Agreement and the Reciprocal Easement Agreement on or before the Agreement Ratification Date and, as to the Final Closing, Developer's approval of the final forms of the Tower Project Easement Agreement and the Reciprocal Easement Agreement.

(d) No City Event of Default shall exist and all of the City's representations and warranties contained in or made pursuant to this Agreement shall be true and correct in all material respects or, if such is not the case, such failure does not have a Material Adverse Effect. At the Initial Closing and the Final Closing, the City shall deliver to Developer a certificate in the form attached as Exhibit L-1 as to the Initial Closing, and in the form attached as Exhibit L-2 as to the Final Closing, certifying whether each of the City's representations and warranties contained in this Agreement continue to be true and correct as of the Initial Closing Date and as of the Final Closing Date, as applicable.

(e) As to the Initial Closing and the Final Closing, the City shall have delivered all documents and monies to Escrow required for the Initial Closing and the Final Closing, as

applicable, including delivery of the closing documents required to be delivered in accordance with this Agreement by the City.

(f) As to the Initial Closing and the Final Closing, as applicable, there shall be no litigation or administrative agency or other governmental proceeding that has been filed against the City, the New Developer Parcel or this Agreement which after the Initial Closing or the Final Closing could have a Material Adverse Effect.

(g) As to the Initial Closing, there shall be no change in the physical and environmental condition of the Existing City Property since the date of the expiration of the Due Diligence Period that would have a Material Adverse Effect.

(h) As to the Initial Closing, all Regulatory Approvals have been granted and are final, binding, and non-appealable.

The Developer's Conditions Precedent contained in this Section 8.2 are solely for the benefit of Developer. If any Developer's Conditions Precedent is not satisfied, the Developer shall have the right in its sole discretion to waive in writing the Developer's Conditions Precedent in question and proceed with the Initial Closing and/or Final Closing, as applicable, as contemplated hereunder. The waiver of any Developer's Conditions Precedent shall not relieve City of any liability or obligation with respect to any covenant or agreement of City (except that, if the Initial Closing and/or Final Closing occurs, any breached representation or warranty of which Developer has knowledge (a) as of the Initial Closing will be deemed waived and shall not survive the Initial Closing, and (b) as of the Final Closing will be deemed waived and shall not survive the Final Closing.

If the sale of the leasehold estate, or the fee estate, in the Existing City Property is not consummated because of an Event of Default by the City or if a Condition Precedent cannot be fulfilled because the City frustrated such fulfillment by some bad faith act or bad faith omission, Developer may exercise all rights and remedies available, following applicable notice and cure periods, as set forth in Section 9.6.

For purposes of this Agreement, "**Material Adverse Effect**" shall mean any item or occurrence that (i) for the City, has a material adverse effect on the value of the New City Parcel or a material adverse effect on the condition of, or City's operation of, the Station Project and Developer does not elect (with no obligation to so elect) to fully mitigate such adverse effect by increasing the Maximum Cost to cover such reduction in the value of the New City Parcel or such condition or operation, or the cost (and Developer does not elect, with no obligation to so elect, to fully mitigate such increased cost or impaired condition or operation by increasing the Maximum Cost to cover such increased cost) or timing of, or the Developer's ability to complete, the Station Project, (ii) for the Developer, if the same will cause the Project Cost to exceed the Maximum Cost and the City does not elect (with no obligation to so elect) to pay for such excess amount, or the same has a material adverse effect on the value of the Existing City Property or the ability of the Developer to develop and/or own and operate the Tower Project, or (iii) for both parties, has a material adverse effect on that party's ability to perform its obligations under this Agreement.

8.3 **Cooperation**

Developer and City shall cooperate with each other and do all acts as may be reasonably requested (except that Developer shall not be required to pay any third party cost unless it can be applied towards the Maximum Cost or unless Developer is required to pay the same under the terms of the Construction Management Agreement, and neither party shall be required to incur any liability or potential liability as a result of such cooperation) by the other or as reasonably needed or expected to fulfill the Conditions Precedent including, without limitation, execution of

any documents, applications or permits. Developer's representations and warranties to the City shall not be affected or released (except as expressly provided above) by the City's waiver or fulfillment of any City's Condition Precedent and City's representations and warranties to Developer shall not be effected or released (except as expressly provided above) by the Developer's waiver or fulfillment of any Developer's Condition Precedent. Developer hereby irrevocably authorizes the City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as the City may reasonably require to complete its due diligence investigations for the Existing Developer Property.

9. ESCROW AND CLOSING

9.1 Opening of Escrow

No less than ninety (90) days prior to the date scheduled for Initial Closing, the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the transactions contemplated hereby. Developer and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transactions contemplated under this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

9.2 Anticipated Closing Dates

(a) Initial Closing. The sale and transfer of the leasehold estate in the Existing City Property (including all improvements situated thereon) to the Developer by the City pursuant to the Ground Lease, all as contemplated under this Agreement (the "**Initial Closing**"), shall be held and delivery of all items to be made at the Initial Closing under the terms of this Agreement shall be made, at the offices of Title Company on a date (the "**Anticipated Initial Closing Date**") that is between the Agreement Ratification Date and the thirty-six (36) month anniversary of the Agreement Ratification Date. The Developer shall select the Anticipated Initial Closing Date (as the same may be extended in accordance with terms and conditions of this Agreement, including, without limitation, the provisions of Sections 2.1(a) and 2.10 of this Agreement), provided that the Developer shall provide City with at least sixty (60) business days' prior written notice of the Anticipated Initial Closing Date, or such other date as may be mutually agreed upon in writing by the parties in their sole discretion. Notwithstanding the foregoing, the Developer shall have the right to extend the Anticipated Initial Closing Date for a reasonable period of time to the extent that such Anticipated Initial Closing Date is delayed due to an Unavoidable Delay. The actual date that the Initial Closing occurs shall be hereinafter referred to as the "**Initial Closing Date**".

(b) Final Closing. The sale and transfer of the New City Parcel and the Station Project to the City by the Developer, and the transfer of fee title to the New Developer Parcel to the Developer by the City, all as contemplated under this Agreement (the "**Final Closing**"), shall be held and delivery of all items to be made at the Final Closing under the terms of this Agreement shall be made at the offices of the Title Company on a date (the "**Anticipated Final Closing Date**") that is the twentieth (20^{th}) business day after DBI issues the TCO (the "**Anticipated Final Closing Date**"), or such other date as may be mutually agreed upon in writing by the parties in their sole discretion. The actual date that the Final Closing occurs shall be hereinafter referred to as the "**Final Closing Date**."

9.3 Developer's Delivery of Documents and Funds

At or before the Initial Closing and the Final Closing, as applicable, Developer shall deliver through escrow to the City, or its nominee, the following:

(a) at the Final Closing, an original, duly executed and acknowledged Fire Station Deed;

(b) at the Final Closing, an original, duly executed Fire Station Bill of Sale;

(c) at the Final Closing, four (4) duly executed original counterparts of the Developer Assignment of Intangible Property and the City Assignment of Intangible Property;

(d) at the Final Closing, originals or copies of the Developer Documents, Assumed Contracts and any other items relating to the ownership or operation of the Fire Station Property not previously delivered to City;

(e) at the Final Closing, an original, duly executed and acknowledged Reciprocal Easement Agreement.

(f) at the Final Closing, an original, duly executed and acknowledged Tower Project Easement Agreement.

(g) at the Final Closing, a properly executed affidavit pursuant to Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended (the "Federal Tax Code"), in the form attached hereto as Exhibit M, and on which City is entitled to rely, that Developer is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;

(h) at the Final Closing, a properly executed California Franchise Tax Board Form 590 certifying that Developer is a California resident if Developer is an individual or Developer has a permanent place of business in California or is qualified to do business in California if Developer is a corporation or other evidence satisfactory to City that Developer is exempt from the withholding requirements of Section 18662 of the California Revenue and Taxation Code;

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

(j) at the Initial Closing and the Final Closing, a closing statement in form and content satisfactory to the City and Developer;

(k) at the Initial Closing and the Final Closing, the duly executed certificate in the form of Exhibit K-1 and form of Exhibit K-2, as applicable, attached hereto regarding the continued accuracy of Developer's representations and warranties as required by Section 8.1(j) hereof;

(l) at the Initial Closing, funds sufficient to pay the Additional Payment;

(m) at the Final Closing, funds sufficient to pay any Purchase Price Shortfall, and, at Initial Closing and Final Closing, all applicable closing and escrow costs to be paid by Developer under this Agreement;

(n) at the Initial Closing, four (4) duly executed original counterparts of the Ground Lease; and

(o) at the Initial Closing, four (4) duly executed original counterparts of the Construction Management Agreement.

9.4 **City's Delivery of Documents and Funds**

At or before the Initial Closing or the Final Closing, as applicable, the City shall deliver to Developer through escrow the following:

(a) at the Final Closing, an original acceptance of the Fire Station Deed executed by the Director of Property;

(b) at the Final Closing, an original, duly executed and acknowledged City Property Deed;

(c) at the Final Closing, an original and duly executed Tower Bill of Sale;

(d) at the Final Closing, four (4) duly executed original counterparts of the of the Developer Assignment of Intangible Property and the City Assignment of Intangible Property;

(e) at the Initial Closing and the Final Closing, a closing statement in form and content satisfactory to the City and Developer, executed by City;

(f) at the Initial Closing and the Final Closing, the duly executed certificate in the form of Exhibit L-1 attached hereto as to the Initial Closing and the form of Exhibit L-2 attached hereto as to the Final Closing regarding the accuracy of the City's representations and warranties as required by Section 8.2(d) hereof;

(g) at the Initial Closing and the Final Closing, such resolutions, authorizations, or other documents or agreements relating to City as Developer or the Title Company may reasonably require to demonstrate the authority of City to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of City to act for and bind City;

(h) at the Final Closing, an original, duly executed and acknowledged Reciprocal Easement Agreement;

(i) at the Final Closing, an original, duly executed and acknowledged Tower Project Easement Agreement;

(j) at the Initial Closing, four (4) duly executed original counterparts of the Ground Lease; and

(k) at the Initial Closing, four (4) duly executed original counterparts of the Construction Management Agreement.

9.5 **Other Documents**

Developer and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the transactions contemplated hereunder for the Initial Closing and the Final Closing in accordance with the terms hereof.

9.6 **Default and Remedies**

(a) Default. The City and Developer agree to use good faith efforts to amicably resolve any disputes that may arise concerning the performance by either party of their obligations under this Agreement. If the parties are not able to resolve any dispute (not including Arbitration Matters), either party can refer the matter to nonbinding mediation in accordance with Section 3.2. If the parties cannot resolve a dispute through such mediation, or if neither party initiates mediation within ten (10) days of notification of the dispute, then the party alleging a breach or default by the other shall send to the other party a notice of default. Any notice of default given by a party shall specify the nature of the alleged default and, where appropriate, the manner in which the default may be satisfactorily cured (if at all). The following shall constitute a default or breach of this Agreement (subject to expiration of all notice and cure periods as set forth below and subject to the limitations set forth below):

(i) the failure to make any payment (between the parties only) within sixty (60) days following written notice that such payment was not made when due and demand for compliance;

(ii) the appointment of a receiver to take possession of all or substantially all of the assets of a party (but not a receiver appointed at the request of the other party), or an assignment for the benefit of creditors, or any action taken or suffered by a party under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days;

(iii) a failure to abide by the judgment or decision of the arbitrator following any Arbitration under Section 3.1, and such failure continues for thirty (30) days following written notice, plus any additional time necessary to appeal any arbitration decision to the extent permitted in Section 3.1(e) herein;

(iv) a breach of a material representation or warranty under this Agreement, which breach is not or cannot be corrected by the breaching party within sixty (60) days following notice;

(v) a transfer or attempted transfer or assignment of a party's rights or obligations under this Agreement without the prior consent of the other party (except as expressly permitted under this Agreement, such as any transfer to a lender permitted under Section 14.12(d), and the failure to cancel or reverse the transfer or assignment within sixty (60) days following written notice and demand for compliance; and

(vi) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement or the Construction Management Agreement, and the continuation of such failure for a period of sixty (60) days following written notice and demand for compliance, or if such obligation cannot reasonably be cured within sixty (60) days, then the party fails to initiate the cure within thirty (30) days and diligently prosecutes the same to completion within such time as is reasonably required.

Notwithstanding anything to the contrary above, the items listed in clauses (ii) and (iii) above shall not be subject to mediation under Section 3.2 and there will be no cure periods beyond the time period listed above. For purposes of this Agreement, (1) "**City Event of Default**" shall mean the occurrence of any of the events in Sections 9.6(a) by City; and (2) "**Developer Event of Default**" shall mean the occurrence of any of the events in Section 9.6(a) by Developer; provided, however, notwithstanding the foregoing, neither City nor Developer shall be in default of this Agreement unless the notice and cure period set forth above in this Section 9.6(a) shall have expired (regardless whether the default or breach is curable).

(b) Remedies.

(i) City Remedies Upon Developer Event of Default. Upon the occurrence of a Developer Event of Default, the City shall have as its sole and exclusive remedy the right to elect one of the following:

(A) to terminate this Agreement, and bring an action against Developer for actual damages, expressly excluding special, indirect, consequential, remote, incidental or punitive damages or damages for lost profits or opportunities; provided, however, under no circumstances shall Developer's liability for any damages incurred by the City in connection with one or more Developer Events of Default exceed, in the aggregate, the sum of $11,000,000 (and, for the breach of a representation or warranty, shall not exceed $1,250,000 as set forth in Section 14.5), or

(B) to bring a suit for specific performance provided that any suit for specific performance must be brought within sixty (60) days following the occurrence of the Developer Event of Default.

(ii) Developer Remedies Upon City Event of Default. Upon the occurrence of a City Event of Default, Developer shall have as its sole and exclusive remedy the right to elect one of the following:

(A) to terminate this Agreement, and bring an action against the City for actual damages (including Design and Entitlement Costs expended by Developer) expressly excluding special, indirect, remote, incidental or punitive damages or damages for lost profits or opportunities; provided, however, under no circumstances shall City's liability for any damages incurred by the Developer in connection with one or more City Events of Default exceed, in the aggregate, the sum of $11,000,000 (and, for the breach of a representation or warranty, shall not exceed $1,250,000 as set forth in Section 14.5), or

(B) to bring a suit for specific performance provided that any suit for specific performance must be brought within sixty (60) days following the occurrence of the City Event of Default.

(c) No Personal Liability. Notwithstanding anything to the contrary in this Agreement, (i) no individual board member, director, commissioner, officer, employee, official or agent of the City, direct or indirect, shall be personally liable to Developer in the event of any default by the City, or for any amount which may become due to Developer under this Agreement, and (ii) no individual board member, director, officer, employee, official, partner, member, employee or agent of Developer, direct or indirect, shall be personally liable to the City in the event of any default by Developer or for any amount which may become due to the City under this Agreement.

9.7 Title Company as Real Estate Reporting Person

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

Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Initial Closing and Final Closing.

10. EXPENSES AND TAXES

10.1 Apportionments

The following are to be apportioned through escrow as of the Initial Closing Date and the Final Closing Date:

(a) Utility Charges. On the Final Closing Date, Developer shall cause all the utility meters for the New City Parcel to be read on the Final Closing Date, and will be responsible for the cost of all utilities used at the New City Parcel before the Final Closing Date and City shall be responsible for such cost on and after the Final Closing Date. On the Initial Closing Date, the City shall cause all the utility meters for the Existing City Property to be read on the Initial Closing Date, and City will be responsible for the cost of all utilities used at the Existing City Property before the Initial Closing Date and Developer will be responsible for such cost on and after the Initial Closing Date.

(b) Other Apportionments. On the Final Closing Date, amounts payable under any contracts approved by the City and liability for other normal property operation and maintenance expenses and other recurring costs for the New City Parcel shall be apportioned as of the Final Closing Date. On the Final Closing Date, Developer shall pay all amounts due for the period before the Final Closing and City shall be responsible on and after the Final Closing. Carrying costs properly incurred in connection with the New City Parcel as generally contemplated by the Project Budget will be included in the calculation of the Project Cost.

On the Initial Closing Date, amounts payable under any contracts approved by Developer and liability for other normal property operation and maintenance expenses and other recurring costs for the Existing City Property shall be apportioned as of the Initial Closing Date. On the Initial Closing Date, City shall pay all amounts due for the period prior to the Initial Closing Date and Developer shall be responsible for such amounts and liability on and after the Final Closing Date to the extent the same are disclosed to Developer prior to the expiration of the Due Diligence Period.

10.2 Closing Costs

On the Initial Closing Date and the Final Closing Date, as applicable, Developer shall pay the cost of the Survey, the premium for the City Title Policy, the Developer Fee Title Policy, the Developer Leasehold Title Policy, and the cost of the endorsements thereto, and escrow and recording fees, any transfer taxes applicable to the transfers contemplated under this Agreement, any sales tax on Station Personal Property, and any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be paid by the Developer. The New City Parcel transfer tax, City Title Policy premium and ten percent (10%) of the escrow fees paid by Developer under this Section 10.2 shall be applied against (and counted towards) the Maximum Cost.

10.3 Real Estate Taxes and Special Assessments

(a) General real estate taxes payable for the tax year prior to the year of the Final Closing and all prior years for the New City Parcel shall be paid by Developer at or before the Final Closing. At or before the Final Closing, Developer shall pay the full amount of any special assessments against the New City Parcel, including, without limitation, interest payable thereon, applicable to the period prior the Final Closing Date. After the Initial Closing, Developer shall pay the full amount of any special assessments against the Existing City Property, including,

without limitation, interest payable thereon, applicable to the period on or after the Initial Closing Date. Any and all general real estate taxes and/or special assessments applicable to the New City Parcel and paid by Developer for the period after the Initial Closing shall be applied against (and counted towards) the Maximum Cost; provided, however, such amount that is to be applied to the Maximum Cost shall be reduced by the portion of such real estate taxes and special assessments, if any, that are attributable to the portion of the Tower Project, if any, that extends into the air space over the New City Parcel to the extent, and only to the extent, such portion of the Tower Project that extends into the air space over the New City Parcel is not part of a lot or parcel owned by Developer.

(b) Developer acknowledges that, as a Charter county and city, real estate taxes will not be assessed against the City with respect to the Existing City Property prior to the Initial Closing. General real estate taxes for the Existing City Property and payable for the portion of the tax year that occurs after the Initial Closing shall be prorated through escrow and paid by Developer as of the Initial Closing Date.

10.4 **Post-Closing Reconciliation**

If any of the foregoing prorations cannot be calculated accurately on the Initial Closing Date as to the Existing City Property or the Final Closing Date as to the New City Parcel, then they shall be calculated as soon after the Initial Closing Date and the Final Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party.

10.5 **Survival**

The provisions of this Section shall survive the Initial Closing and the Final Closing.

11. REPRESENTATIONS AND WARRANTIES; RELEASE

11.1 **Representations and Warranties of Developer**

Except as set forth in Exhibit N-1 ("**Developer's General Disclosures**"), Developer represents and warrants to the City as follows as of the Effective Date:

(a) To Developer's actual knowledge, (i) there are no material physical or mechanical defects of the Existing Developer Property, and (ii) there are no violations of any laws, rules or regulations applicable to the Existing Developer Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) To Developer's actual knowledge, the Developer Documents furnished to the City are all of the relevant documents and information pertaining to the condition and operation of the Existing Developer Property.

(c) To Developer's actual knowledge, except as disclosed to City, no document or instrument furnished by the Developer to the City pursuant to this Agreement contains any untrue statement of material fact or is materially misleading.

(d) Developer has not received written notification from any governmental agency of any condemnation, either instituted or planned to be instituted, by any governmental or quasi-governmental agency other than the City, which could detrimentally affect the use, operation or value of the Existing Developer Property.

(e) To Developer's actual knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or for the normal use and operation of the Existing Developer Property are installed to the property lines of the Existing Developer Property and are adequate to service the Existing Developer Property.

(f) To Developer's actual knowledge, except for the exceptions listed in Exhibit I-2, and except as otherwise disclosed to the City in writing prior to the expiration of the Due Diligence Period, other than the Reciprocal Easement Agreement and Tower Project Easement Agreement that will be executed at Final Closing, there are no easements or rights of way burdening the Existing Developer Property which are not of record with respect to the Existing Developer Property, and, except as disclosed to City in writing prior to the expiration of the Due Diligence Period and except for the Reciprocal Easement Agreement and Tower Project Easement Agreement that will be executed at Final Closing, to Developer's actual knowledge, there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Existing Developer Property to gain access to other real property. To Developer's actual knowledge, except as disclosed to the City in writing prior to the expiration of the Due Diligence Period, there are no disputes with regard to the location of any fence or other monument of the Existing Developer's Property boundary nor any claims or actions involving the location of any fence or boundary.

(g) Developer has not received service of process with respect to any litigation that might detrimentally affect the use or operation of the Existing Developer Property for its intended purpose or the value of the Existing Developer Property or the ability of Developer to perform its obligations under this Agreement.

(h) Developer is the legal and equitable owner of the Existing Developer Property, with full right to convey the same, and without limiting the generality of the foregoing, and, except for the rights granted to the City hereunder, Developer has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Existing Developer Property.

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

(j) Developer represents and warrants to the City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Developer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by the City.

(k) To Developer's actual knowledge, (i) except as described in the Developer Documents or in Exhibit N-2 ("**Developer's Environmental Disclosure**"), the Existing Developer Property is not in violation of any Environmental Laws; (ii) the Existing Developer Property is not now, nor has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except as described in the Developer Documents or in Developer's Environmental Disclosure and except for the use of

such substances in such limited amounts as are customarily used in the construction or operation of office buildings and which are used in compliance with Environmental Laws; (iii) except as disclosed in the Developer Documents or Developer's Environmental Disclosure, there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Existing Developer Property in violation of Environmental Laws; (iv) except as disclosed in the Developer Documents or Developer's Environmental Disclosure, there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the New City Parcel; (v) except as disclosed in the Developer Documents or Developer's Environmental Disclosure, the Existing Developer Property does not consist of any landfill or of any building materials that contain Hazardous Material in violation of Environmental Laws; and (vi) except as disclosed in the Developer Documents or Developer's Environmental Disclosure, the Existing Developer Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the New City Parcel, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

(A) "**Environmental Laws**" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Existing Developer Property, including, without limitation, soil, air and groundwater conditions.

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

(C) "**Release**" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Existing Developer Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(l) To Developer's actual knowledge, there are no contracts encumbering the Existing Developer Property that will be binding on the City after the Final Closing except for the Assumed Contracts (including contracts approved by the City in writing for assumption at Final Closing), the Accepted Conditions of Title, any Project Contracts and any contracts approved by the City (which approval shall not be unreasonably withheld).

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

(n) To Developer's actual knowledge, except for the leases described on the attached Exhibit R (the "**Existing Leases**"), which were scheduled to expire before June of 2020 under their own terms before Developer acquired the Existing Developer Property, without automatically converting to month to month terms or any extension options, no party other than Developer will have any right to use, lease, or otherwise occupy the Existing Developer Property and no party other than City will have any right to acquire or purchase the portion of the Existing Developer Property that will become the New City Parcel.

For purposes hereof, the phrase "to Developer's actual knowledge" shall mean the actual knowledge of Matthew Witte and includes information obtained by Matthew Witte during the Developer's due diligence in the acquisition of the Existing Developer Property. Developer represents that this is the person within Developer's organization that have the most knowledge of the Existing Developer Property, and are therefore in the best position to give these representations.

11.2 **Representations and Warranties of City**

Except as set forth in Exhibit O-1 ("**City's General Disclosures**"), City represents and warrants to the Developer as follows as of the Effective Date:

(a) To City's actual knowledge, there are no material physical or mechanical defects of the Existing City Property, and no violations of any laws, rules or regulations applicable to the Existing City Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) To City's actual knowledge, the City Documents furnished to the Developer are all of the relevant documents and information pertaining to the condition of the Existing City Property in the possession of City's Real Estate Division.

(c) To City's actual knowledge, except as disclosed to the Developer, no document or instrument furnished by the City to the Developer pursuant to this Agreement contains any untrue statement of material fact or is materially misleading.

(d) City has not received written notification from any governmental agency of any condemnation, either instituted or planned to be instituted, by any governmental or quasi-governmental agency, that could detrimentally affect the use, operation or value of the Existing City Property.

(e) To City's actual knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Existing City Property are installed to the property lines of the Existing City Property.

(f) To City's actual knowledge, other than the Reciprocal Easement Agreement that will be executed at Final Closing, there are no easements or rights of way burdening the Existing City Property that are not of record with respect to the Existing City Property, and, except as disclosed to the Developer in writing prior to the expiration of the Due Diligence Period and except for the Reciprocal Easement Agreement that will be executed at Final Closing, to City's actual knowledge, there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Existing City Property to gain access to other real property. To City's actual knowledge, there are no disputes with regard to the location of any fence or other monument of the Existing City Property boundary nor any claims or actions involving the location of any fence or boundary.

(g) City has not received service of process with respect to any litigation that might detrimentally affect the use or operation of the Existing City Property for the development of the Tower Project as contemplated under this Agreement or the value of the Existing City Property or the ability of City to perform its obligations under this Agreement.

(h) City is the legal and equitable owner of the Existing City Property, with full right to convey the same subject to the terms of this Agreement, and without limiting the generality of the foregoing, and, except for the rights granted to the Developer hereunder, City has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Existing City Property.

(i) To City's actual knowledge, except as described in the City Documents or in Exhibit O-2 ("**City's Environmental Disclosure**"): (A) the Existing City Property is not in violation of any Environmental Laws; (B) Existing City Property is not now, nor has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited amounts as are customarily used in the operation of fire stations and that are used in compliance with Environmental Laws; (C) there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Existing City Property in violation of Environmental Laws; (D) the Existing City Property does not consist of any landfill or of any building materials that contain Hazardous Material in violation of Environmental Laws; (E) the Existing City Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Existing City Property, or the migration of Hazardous Material from or to other property, and (F) except as disclosed in the City's Environmental Disclosure, there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Existing City Property.

(j) There are no contracts encumbering the Existing City Property that will be binding on the Developer after the Initial Closing except for the Accepted Developer Conditions of Title.

(k) Except for this Agreement, no party has the right to acquire or lease the Existing City Property.

For purposes hereof, the phrase "to City's actual knowledge" shall mean the actual knowledge of John Updike and Andrico Penick. City represents that these are the persons within City who have the most knowledge of the Existing City Property, and are therefore in the best position to give these representations.

12. RISK OF LOSS, INSURANCE, AND POSSESSION

12.1 Risk of Loss of New City Parcel

(a) If any of the New City Parcel is damaged or destroyed before the Initial Closing Date, then Developer shall notify the City of such damage or destruction and whether it would increase the anticipated Project Costs. As the existing improvements on the New City Parcel are intended to be demolished, Developer shall not be responsible under this Agreement to rebuild such improvements but instead shall take appropriate steps to ensure the safety of all occupants and surrounding property. If City or Developer reasonably determine such damage or destruction will cause the Project Costs to exceed the Maximum Cost and neither party elects

(with no obligation to so elect) to cover such increase in the Maximum Cost), then either party may elect to either terminate this Agreement by written notice of such termination to the other party within forty-five (45) days following Developer's notification to City of such damage or destruction.

(b) If any of the New City Parcel or the Fire Station Improvements are damaged or destroyed after the Initial Closing, the Developer shall be responsible, at its sole cost, for restoring such damage to the extent necessary to deliver the Station Project in the condition required by this Agreement and the Construction Management Agreement at Final Closing. If the Developer receives insurance proceeds to restore any damaged portion of the Fire Station Improvements, the insurance proceeds used for such restoration work shall not be treated as a Project Cost.

(c) In the event of any threatened condemnation proceedings against the New City Parcel, the parties shall meet and confer in good faith to discuss the potential condemnation and the appropriate response. If the proposed condemnation does not cause a Material Adverse Effect, as reasonably determined by the City, then the Developer shall proceed with the Station Project, making any necessary adjustments, and any and all condemnation proceeds will be used by the Developer in connection with the construction of the Station Project. If the proceeds have not been paid as of the Final Closing, Developer shall assign to City at Final Closing all of Developer's rights in and to the condemnation proceeds. If the condemnation is proposed prior to the Initial Closing and causes a Material Adverse Effect, then the City shall have the right to terminate this Agreement on forty-five (45) days prior written notice. If the condemnation is proposed after the Initial Closing and before the Final Closing and causes a Material Adverse Effect, then any and all condemnation proceeds will be assigned to City, the parties shall proceed to Final Closing (in which event Developer shall not be obligated to construct the Fire Station Improvements, but the City shall be obligated to execute and deliver to the Developer the City Property Deed (and all other related documents), with Developer paying any amount by which the Maximum Cost exceeds the Project Costs paid as of the Final Closing, and delivering the Final Closing documents described in Section 9.3, modified as appropriate to only convey the remaining portion of the New City Parcel following any such condemnation.

(d) City shall have no obligation to pay for the Design and Entitlement Costs or the Project Costs if this Agreement terminates pursuant to this Section 12.1.

12.2 **Risk of Loss of Existing City Property**

(a) If any of the Existing City Property is damaged or destroyed before the Initial Closing, and such damage or destruction is estimated by Developer to cause the cost of constructing the Tower Project to increase by more than five percent (5%) and Developer does not elect (with no obligation to so elect) to cover such increase, then the Developer shall have the right to terminate this Agreement by delivering written notice of such termination to City. The Developer shall make its election to terminate this Agreement within forty-five (45) days of learning of the amount of the increase.

(b) If any of the Existing City Property or Tower Project is damaged or destroyed after the Initial Closing, the Developer shall be responsible, at its sole cost, for restoring such damage to the extent necessary to deliver the Station Project in the condition required by this Agreement and the Construction Management Agreement at Final Closing and City shall have no obligation to restore any damage to the Existing City Property or Tower Project.

(c) In the event of any threatened condemnation proceedings against the Existing City Property prior to the Initial Closing, Developer shall have the right to terminate this Agreement on forty-five (45) days prior written notice of receiving City's written notice of such proposed condemnation by delivering written notice of such termination to City In the event of

any threatened condemnation proceedings against the Existing City Property after the Initial Closing and before the Final Closing, all condemnation proceeds will be disbursed as set forth in the Ground Lease and the parties shall proceed to Final Closing, with City delivering the Final Closing documents described in Section 9.2, modified as appropriate to only convey the remaining portion of the Existing City Property.

(d) City shall have no obligation to pay for the Design and Entitlement Costs or the Project Costs if this Agreement terminates pursuant to this Section 12.1.

13. MAINTENANCE; CONSENT TO NEW CONTRACTS

13.1 Maintenance of Property

(a) During the term of this Agreement (i) so long as the Existing Leases are in effect, Developer shall enforce its rights under the Existing Leases to require the tenants thereunder to maintain the Existing Developer Property consistent with their obligations under the Existing Leases, and (ii) upon termination of the Existing Leases and the tenants under the Existing Leases vacating their premises thereunder, Developer shall use commercially reasonable efforts to maintain the Existing Developer Property in good order and condition and in compliance with applicable laws. Developer shall not extend the existing term of the Existing Leases nor allow any holdover by the tenants of the Existing Developer Property.

(b) During the term of this Agreement, City shall keep the Existing City Property in good order and condition and in compliance with applicable laws and shall not execute any documents that would continue to burden or affect the Existing City Property after the Initial Closing, nor take, in its proprietary capacity, any action at the Existing City Property that could adversely affect the ability of the Developer to construct and develop the Tower Project. Notwithstanding anything to the contrary in the foregoing sentence, Developer agrees City's current fire station operations will not be deemed to adversely affect Developer's ability to construct, develop, and operate the Tower Project provided City vacates the Existing City Property at the time specified in the Ground Lease.

13.2 City's Consent to New Contracts Affecting the New City Parcel; Termination of Existing Contracts

Except for the Tower Project Easement Agreement and the Reciprocal Easement Agreement, the Assumed Contracts, the Project Contracts approved by the City, the Pre-Approved Project Contracts, and the Accepted City Conditions to Title, Developer shall not enter into any lease or contract, or any amendment thereof, that will affect the New City Parcel after the completion of the Station Project, without in each instance obtaining the City's prior written consent thereto. The City agrees that it shall not unreasonably withhold any such consent and, in connection therewith, acknowledges that there are likely to be easements that Developer must provide in order to develop and operate the Station Project, all of which shall be considered Accepted City Conditions to Title upon the City's approval of the same (which approval will not be unreasonably withheld or delayed). Developer shall terminate before the Final Closing, at no cost or expense to City, any and all agreements entered into or assumed by Developer and affecting the Fire Station Property except for the Assumed Contracts, the Project Contracts, the Pre-Approved Project Contracts and the Accepted City Conditions to Title and any other contracts approved by the City as provided hereunder, and shall deliver full possession of the Fire Station Property to the City at Final Closing. The provisions set forth in the foregoing sentence of this Section shall survive the Final Closing with respect to any agreements Developer fails to terminate as required by such sentence, but only to the extent City did not have actual knowledge of any such agreement or the Developer's failure to terminate the same as of the Final Closing. Notwithstanding anything stated to the contrary in this Section 13.2 or elsewhere in this Agreement, Developer shall have the right from time to time to encumber all or portions of the

Existing Developer Property and/or the Existing City Property with a deed of trust or other security instrument to secure financing procured by Developer for the acquisition, development and/or construction of the Station Project and/or the Tower Project provided that Developer causes any such acquisition deed of trust or other security instrument to be released from the New City Parcel prior to the Initial Closing and Developer causes any such deed of trust or other security instrument for the development and/or construction of the Station Project and/or the Tower Project to be released from the New City Parcel prior to the Final Closing.

14. GENERAL PROVISIONS

14.1 **Notices**

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property Re: **530 Sansome Property Exchange** Telephone No. (415) 554-9860 Email Address: _____
with copy to:	Carol Wong Deputy City Attorney Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Re: **530 Sansome Property Exchange** Telephone No. (415) 554-4711 Email Address: carol.r.wong@sfcityatty.org
Developer:	EQX Jackson SQ Holdco LLC 44 Montgomery Street Suite 1300 San Francisco, CA 94104 Attn: Gino Canori Telephone No. (415) 653-3183 Email Address: gcanori@related.com
with a copy to:	Greenberg Traurig LLP 3161 Michelson Drive, Suite 1000 Irvine, California 92612 Attention: L. Bruce Fischer, Esq. Telephone No.: (949) 732-6670 Email Address: fischerb@gtlaw.com
and a copy by email to:	The Related Companies, L.P. 60 Columbus Circle New York, New York 10021

Attention: Jennifer A. McCool
Telephone No.: (212) 801-3478
Email Address: jmccool@related.com

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by email, to the email addresses listed above, or as otherwise provided from time to time. However, neither party may give official or binding notice by email unless, because of circumstances beyond such party's control, (i) it is not reasonably possible to timely provide notice by a means other than by email, and (ii) at the time of sending such email, the sending party verbally notifies the other party of such email using the telephone numbers set forth above, with any such verbal simultaneous notice given by Developer to City also being made to John Updike at (415) 702-7194 or to any other City person (and telephone number) designated to receive such additional verbal notice for City in a writing delivered by the Director of Property to the Developer.

14.2 **Brokers and Finders**

Neither party has had any contact or dealings regarding the Existing City Property or the Existing Developer Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the property transfers contemplated herein, except for John Jensen and Richard Johnson of Colliers International ("**Colliers**") representing City, and neither party has engaged any other broker in connection with this proposed transaction. Colliers shall earn a fee under their contract with the City if the Final Closing occurs, which shall be paid by Developer to Colliers at Final Closing, and shall be credited towards the Maximum Cost (or shall be paid in any other manner mutually approved by City and the Developer in their sole and absolute discretion). If any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section 14.2 shall survive the Initial Closing for the applicable statute of limitations.

14.3 **Successors and Assigns**

Neither party shall assign or transfer its rights or obligations under this Agreement without first obtaining the prior written consent of the other party; provided Developer shall have the right to assign this Agreement (a) to an entity in which an affiliate of Developer is the managing member, the manager or the sole member (directly or indirectly), except that Developer shall not be released from its obligations under this Agreement and such assignee shall assume all of Developer's obligations under this Agreement pursuant to an assignment and assumption agreement reasonably acceptable to the City, and (b) as provided in Section 14.12 (d) below.

14.4 **Amendments**

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

14.5 **Continuation and Survival of Representations and Warranties; Survival of Certain Covenants and Conditions**

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement shall, subject to the terms and conditions of this Agreement, be deemed to be material, and, (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Initial Closing (as to the representations and warranties that related to the Initial Closing) and the Final Closing (as to the representations and warranties that apply to the Final Closing) for a period of twenty-four (24) months following the Initial Closing and the Final Closing, respectively (and shall survive in any action for termination and/or damages based upon the alleged breach of the representation or warranty that is filed within the time frames permitted under this Agreement); provided, however, in no event shall the City's or Developer's liability, if any, following the Initial Closing and the Final Closing, with respect to the breach of any representations and warranties, exceed One Million Two Hundred Fifty Thousand Dollars ($1,250,000) in the aggregate for both the Initial Closing and the Final Closing. Except as otherwise expressly provided in this Agreement, none of the covenants or conditions of the Developer or the City under this Agreement shall (a) survive the termination of this Agreement, except in connection with an action by such party for termination of this Agreement and damages based on the alleged breach of such covenant or condition, or (b) survive the Initial Closing or the Final Closing; provided, however, notwithstanding the foregoing or anything contained to the contrary in this Agreement, those covenants and conditions of the parties that relate to the transactions contemplated by the Final Closing shall expressly survive the Initial Closing. In addition, notwithstanding anything to the contrary in this Agreement, to the extent either Developer or the City has actual knowledge of a breached representation or warranty at the time of the Initial Closing or the Final Closing, such party with actual knowledge of such breached representation or warranty shall have no right to assert a claim against the other party after the Initial Closing or the Final Closing, as applicable, to the extent such claim relates to such breached representation or warranty.

14.6 **Governing Law**

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

14.7 **Merger of Prior Agreements**

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

14.8 **Parties and Their Agents; Approvals**

As used herein, the term "**Agents**" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. Notwithstanding anything stated to the contrary herein, all approvals, consents or other determinations required by City hereunder shall be made by or through the Director of Property and any approval by the Director of Property shall constitute the approval by the City (as noted above, the City is acting in its proprietary capacity under this Agreement, so any City regulatory actions, including the issuance or denial of any Regulatory Approval, shall not be a City approval or action under this Agreement). All approvals, consents or other determinations required by the City or Developer must be in writing except to the extent deemed approved in accordance with the terms of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, with respect to

all approvals and/or consents required under this Agreement, if a party fails to approve, disapprove or approve conditionally any approval or consent requested by the other party in writing within seven (7) business days following receipt of a written request for approval or consent, so long as the applicable documents are complete (and if such documents are not complete, the recipient shall so notify the sender in writing within three (3) business days following receipt of the documents), then the requesting party may submit a second written notice to the other party requesting approval of the submittal within three (3) business days after the second notice. A party's failure to timely respond to the other party's request for an approval, consent or determination of any matter shall constitute a failure by such party to comply with a material term of this Agreement.

14.9 **Interpretation of Agreement**

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

14.10 **Attorneys' Fees**

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

14.11 **Sunshine Ordinance**

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

14.12 **Memorandum of Agreement; Memorandum of Construction Management Agreement; Collateral Assignment of Agreement.**

(a) Memorandum of Agreement.

(i) Promptly following the Effective Date, the parties shall execute and acknowledge two original copies of a memorandum of agreement in the form attached hereto as Exhibit P ("**Memorandum of Conditional Exchange Agreement**"), and Developer shall promptly record one original copy of the Memorandum of Conditional Exchange Agreement against the Existing Developer Property, and City shall promptly record one original copy of the Memorandum of Conditional Exchange Agreement against the Existing City Property, in the Official Records of the County in San Francisco, California.

(ii) Within ten (10) business days of receiving a subordination agreement to subordinate, during the period between the Effective Date and the Initial Closing, the Memorandum of Conditional Exchange Agreement and the terms of this Agreement to the lien of any deed of trust or other security interest encumbering the Existing Developer Property to secure Developer's predevelopment and acquisition loan and/or a construction loan for the Existing Developer Property, City shall execute, acknowledge and record such subordination agreement in the Official Records of the County of San Francisco, California as long as such subordination agreement is in a form that is approved by City, which approval shall not be unreasonably withheld. If such form is not approved by City, City shall deliver written notice of its required changes to the form to Developer within such ten (10) business day period.

(iii) Within five (5) business days following Developer's written request and delivery of a mutually-agreeable release to release the Memorandum of Conditional Exchange Agreement from that portion of the Existing Developer Property that will not be part of the New City Parcel, the City shall execute, acknowledge and record such release in the Official Records of the County of San Francisco, California.

(b) Memorandum of Construction Management Agreement. Promptly following the execution and delivery of the Construction Management Agreement, the City and Developer shall execute and acknowledge a mutually-agreeable memorandum ("**Memorandum of Construction Management Agreement**") of the Construction Management Agreement, which will be recorded against the Existing Developer Property in the Official Records of the County of San Francisco, California. Within five (5) business days following Developer's written request and delivery of a mutually-agreeable release that releases the Memorandum of Construction Management Agreement from that portion of the Existing Developer Property that will not be part of the New City Parcel, the City shall execute and record such release in the Official Records of the County of San Francisco, California

(c) Collateral Assignment of Agreement. Developer shall have the right to collaterally assign to its lender(s), as collateral security for loans funding Developer's acquisition of the Existing City Property and the Existing Developer Property and the development and/or construction of the Tower Project and/or the Station Project, its rights under this Agreement, and, within twenty (20) days following Developer's written request, City shall execute such documents as may be reasonably required by Developer's lender(s) to perfect such collateral assignment and to allow such lender(s) to enforce the terms and conditions of this Agreement subject to such lender(s) assuming Developer's obligations under this Agreement. Without limiting the foregoing, City agrees to execute, within ten (10) days following Developer's written request, an Assignment of Conditional Property Exchange Agreement with respect to such loans in the form of that attached hereto as Exhibit Q.

14.13 **Counterparts**

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

14.14 **Effective Date**

As used herein, the term "**Effective Date**" shall mean the date on which (i) the City's Board of Supervisors and Mayor adopt a resolution approving and authorizing the Director of Property's execution of this Agreement and the transactions contemplated hereby, and (ii) each party executes and delivers this Agreement to the other party. The Effective Date of this Agreement is _____, 2020 [*to be inserted when the date is determined*].

14.15 **Severability**

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

14.16 **Agreement Not to Market**

Developer agrees that unless and until this Agreement terminates pursuant to its terms, neither Developer, nor any Agent on behalf of Developer, shall negotiate with any other parties pertaining to the sale of the Existing Developer Property and shall not market the Existing Developer Property to third parties. The City agrees that unless and until this Agreement terminates pursuant to its terms, neither the City, nor any Agent on behalf of the City, shall negotiate with any other party for the lease or purchase of the Existing City Property.

14.17 **Confidential Information**

Developer understands and agrees that, in the performance of its obligations under this Agreement, Developer may have access to the City's proprietary or confidential information, the disclosure of which to third parties may be damaging to the City. City understands and agrees that, in the performance of its obligations under this Agreement, City may have access to Developer's proprietary or confidential information, the disclosure of which to third parties may be damaging to Developer. Each party agrees to identify any information it gives to the other that it deems proprietary or confidential, and each party agrees to use reasonable care to safeguard any proprietary or confidential information from public disclosure. Notwithstanding the foregoing, if and to the extent any document or information is subject to disclosure under federal, state, or local law, including the California Public Records Act or the San Francisco Sunshine Ordinance, or a court order, such disclosure shall not be deemed a violation of this Agreement. Each party shall use reasonable efforts to notify the other of any disclosure request relating to any document marked as proprietary or confidential and discuss the basis for disclosing or withholding the document. If a party determines that it must, under applicable law, disclose a document that the other party has marked as proprietary and confidential, it shall provide the other party not less than forty-eight (48) hours' notice before any such disclosure in order to allow for the noticed party to seek an injunction to prevent the disclosure, provided that failure to provide such notice or any disclosure shall not be the basis for any liability under this Agreement.

14.18 **Prohibitions on Campaign Contributions**

For the purposes of this Section, a "**City Contractor**" is a party that contracts with, or seeks to contract with, the City for the sale 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. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor 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 that contract or twelve (12) months after the date that contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $100,000 or more. Developer further acknowledges that (i) the prohibition on contributions applies to Developer, each member of Developer's board of directors, Developer's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Developer, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Developer, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Developer certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 of the San Francisco Campaign and Governmental Conduct Code by the time it submitted a proposal for the contract to the City, and provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

14.19 **Time of Essence**

Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

14.20 **Non-Liability**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Developer, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to Developer, its successors and assigns, or for any obligation of City under this Agreement.

14.21 **Conflicts of Interest**

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

14.22 **Tropical Hardwood and Virgin Redwood Ban**

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

14.23 **Section References for Terms Defined in this Agreement**

Each of the following terms is defined in the Section of this Agreement or in the Exhibit listed opposite it.

Term	**Section/Exhibit**
Accepted City Conditions of Title	Section 6.2 (b)
Accepted Developer Conditions of Title	Section 6.2 (a)
Agents	Section 14.8
Agreement	Introduction
Agreement Ratification Date	Section 1.7 (a)
Agreement Rejection	Section 1.7 (a)
Anticipated Initial Closing Date	Section 9.2 (a)
Anticipated Final Closing Date	Section 9.2 (b)
Apportionment	Section 1.3 (f)
Approved Contractors	Section 1.3 (e)
Approved Form of Construction Management Agreement	Section 2.1 (a)
Approved Form of Ground Lease	Section 2.10
Arbitration Matter	Section 3.1 (a)
Arbitration Notice	Section 3.1 (b)
Architect	Section 1.3 (a)
Architect Contract	Section 1.3 (b)
Assumed Contracts	Section 6.4 (a)
CEQA	Recitals-Paragraph F
CEQA Contingency	Section 1.4
CEQA Date	Section 1.6
CEQA Documents	Section 1.4
City	Introduction
City Assignment of Intangible Property	Section 6.4 (b)
City's Conditions Precedent	Section 8.1
City Document	Section 7.1
City's Environmental Disclosure	Section 11.2 (i)
City Event of Default	Section 9.6 (a)
City's General Disclosures	Section 11.2
City Parties	Section 7.5
City Property Deed	Section 6.1 (c)
City Releasers	Section 7.4
City Title Policy	Section 6.2 (b)
Colliers	Section 14.2

Combined Project	Recitals-Paragraph D
Combined Project D&E Costs	Section 1.3 (f)
Conditions Precedent	Section 8.2
Contract Rejection	Section 1.7 (a)
Construction Contract	Section 1.3 (b)
Construction Cost Report	Section 2.1 (b)
Construction Management Agreement	Section 2.1 (a)
DBI	Section 2.4
Deed Liquidated Damages	Section 9.6 (b)(iv)
Design and Entitlement Costs	Section 1.3 (e)
Design and Entitlement Cost Report	Section 1.3 (e)
Design and Entitlement Work	Section 1.3 (a)
Developer	Introduction
Developer Assignment of Intangible Property	Section 6.4 (a)
Developer's Conditions Precedent	Section 8.2
Developer Documents	Section 7.1
Developer's Environmental Disclosure	Section 11.1 (k)
Developer Event of Default	Section 9.6 (a)
Developer Fee Title Policy	Section 6.2 (c)
Developer's General Disclosures	Section 11.1
Developer Leasehold Title Policy	Section 6.2 (a)
Developer Parties	Section 7.4
Environmental Laws	Section 11.1 A
Existing Developer Property	Recitals-Paragraph A
Developer Releasers	Section 7.5
Director of Property	Recitals-Paragraph E
Due Diligence Period	Section 7.2 (a)
Effective Date	Section 14.14
Entitlement Budget	Section 1.3 (a)
Environmental Review	Recitals-Paragraph F
Existing City Property	Recitals-Paragraph A
Existing Concept Plans	Section 1.3 (a)
Existing Developer Property	Recitals-Paragraph A
Existing Leases	Section 11.1 (n)
Federal Tax Code	Section 9.3
Final Closing	Section 9.2 (b)
Final Closing Date	Section 9.2 (b)
Fire Station Appurtenances	Section 4.1 (c)(iii)
Fire Station Bill of Sale	Section 6.3
Fire Station Deed	Section 6.1 (b)
Fire Station Improvements	Section 4.1 (c)(i)
Fire Station Intangible Property	Section 4.1 (c)(v)
Fire Station Property	Section 4.1 (c)
Fire Station Personal Property	Section 4.1 (c)(iv)
First Approval Deadline	Section 1.3 (b)

First Source Hiring and Local Hiring Requirements	Exhibit E
General Contractor	Section 1.3 (a)
Ground Lease	Section 2.10
Ground Lease Liquidated Damages	Section 9.6 (b)(iii)
Hazardous Material	Section 11.1 B
Indemnitees	Section 2.7
Initial Closing	Section 9.2 (a)
Initial Closing Date	Section 9.2 (a)
JAMS	Section 3.1 (b)
Labor Requirements	Section 2.6 (a)
Liabilities	Section 2.7
Material Adverse Effect	Section 8.2
Maximum Cost	Section 2.1 (b)
Mediation Matter	Section 3.2 (a)
Mediation Request	Section 3.2 (b)
Memorandum of Conditional Exchange Agreement	Section 14.12 (a)(i)
Memorandum of Construction Management Agreement	Section 14.12(b)
New City Parcel	Recitals-Paragraph C(i)
New Developer Parcel	Recitals-Paragraph C(i)
Outside CEQA Date	Section 1.5
Pre-Approved Project Contract	Section 1.3 (b)
Project Budget	Section 1.1 (c)
Project Contractor	Section 2.2
Project Contracts	Section 1.3 (b)
Project Cost	Section 2.1 (b)
Projected Project Budget	Exhibit C
Proposed Entitlements	Recitals-Paragraph D
Purchase Price Shortfall	Section 5.2
Reciprocal Easement Agreement	Section 4.2 (b)
Release	Section 11.1 C
Reporting Requirements	Section 9.7
Regulatory Approvals	Section 1.1 (a)
Rules	Section 3.1 (c)
Station Project	Recitals-Paragraph C(iii)
Survey	Section 8.1 (g)
TCO	Section 2.4
Title Company	Section 6.2 (a)
Tower Appurtenances	Section 4.1 (d)(ii)
Tower Bill of Sale	Section 6.3
Tower Improvements	Section 4.1 (d)(i)
Tower Intangible Property	Section 4.1 (d)(iv)
Tower Personal Property	Section 4.1 (d)(iii)
Tower Project Easement Agreement	Section 4.2 (a)

Tower Project	Recitals Paragraph C(ii)
Tower Property	Section 4.1 (d)
Unavoidable Delay	Section 1.1(a)

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DEVELOPER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

DEVELOPER:

EQX JACKSON SQ HOLDCO LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By:_____
Andrico Q. Penick
Director of Property

Date:_____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:_____
Carol Wong
Deputy City Attorney

EXHIBIT “A”

Legal Description of Existing City Property

EXHIBIT “B”

Legal Description of Existing Developer Property

EXHIBIT “C”

Project Budget

NOTE: The schedule will need to address cost apportionment for a CEQA challenge to the Combined Project per Section1.8

EXHIBIT “D”

[Intentionally deleted]

EXHIBIT “E”

First Source Hiring and Local Hiring Requirements

EXHIBIT “F”

Depiction of Easement Areas for Tower Project Easement

EXHIBIT “G”

Depiction of Easement Areas for Reciprocal Easement Agreement

EXHIBIT “H-1”

Form of Fire Station Deed

EXHIBIT “H-2”

Form of City Property Deed

EXHIBIT “I-1”

Accepted Developer Conditions of Title

EXHIBIT “I-2”

Accepted City Conditions of Title

EXHIBIT “J-1”

List of Material Developer Documents in Developer’s Possession

EXHIBIT “J-2”

List of Developer Documents Delivered to City

EXHIBIT “K-1”

Form of Closing Certificate to be Delivered by Developer at Initial Closing

EXHIBIT “K-2”

Form of Closing Certificate to be Delivered by Developer at Final Closing

EXHIBIT “L-1”

Form of Closing Certificate to be Delivered by City at Initial Closing

EXHIBIT “L-2”

Form of Closing Certificate to be Delivered by City at Final Closing

EXHIBIT “M”

Form of FIRPTA Affidavit by City at Final Closing

EXHIBIT “N-1”

Developer’s General Disclosures

EXHIBIT “N-2”

Developer’s Environmental Disclosures

If, to Developer’s actual knowledge, there have been or are any underground storage tanks, septic tanks or wells, or any aboveground tanks at any time used to store Hazardous Materials located in, on or under the New City Parcel, they should be listed here along with all information Matthew Witte has about their location, type, age and content, their registration with all appropriate authorities, their compliance with all applicable statutes, ordinances and regulations, and any release or threatened release of any Hazardous Material into the environment by them

EXHIBIT “O-1”

City’s General Disclosures

EXHIBIT “O-2”

City’s Environmental Disclosures

If, to City’s actual knowledge, there have been or are any underground storage tanks, septic tanks or wells, or any aboveground tanks at any time used to store Hazardous Materials located in, on or under the Existing City Property, they should be listed here along with all information Andrico Penick and John Updike have about their location, type, age and content, their registration with all appropriate authorities, their compliance with all applicable statutes, ordinances and regulations, and any release or threatened release of any Hazardous Material into the environment by them

EXHIBIT “P”

Form of Memorandum of Conditional Exchange Agreement

[Note” the Memorandum of Conditional Exchange Agreement should not encumber the leasehold estate created under the Ground Lease at the time the Ground Lease is executed; it will; however, encumber the fee interest until the fee interest is transferred to the Developer]

EXHIBIT “Q”

Form of Assignment of Conditional Property Exchange Agreement

EXHIBIT “R”

List of Existing Leases