

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**by and among**

**THE REDEVELOPMENT AGENCY OF THE  
CITY OF SOUTH SAN FRANCISCO**

**and**

**OYSTER POINT VENTURES, LLC**

**and**

**THE CITY OF SOUTH SAN FRANCISCO**

March 23, 2011

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THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into effective as of March 23, 2011 (“**Effective Date**”) by and between the Redevelopment Agency of the City of South San Francisco, a public body corporate and politic (“**Agency**”), and Oyster Point Ventures, LLC, a Delaware limited liability company (“**Developer**”). Agency and Developer are hereinafter collectively referred to herein individually as a “**Party**” and collectively as the “**Parties.**” The City of South San Francisco, a municipal corporation (“**City**”), joins as a Party to certain portions of this Agreement, as set forth herein.

## RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (“**CRL**”), the Agency has responsibility to implement the redevelopment plan for the Downtown/Central Redevelopment Project Area (the “**Project Area**”) established by the Redevelopment Plan adopted for the Project Area pursuant to Ordinance No. 1056-89, adopted on July 12, 1989 and as subsequently amended (the “**Redevelopment Plan**”).

B. City is the owner of the real property located within the Project Area, commonly known as the Oyster Point Marina property and more particularly identified on the site plan attached hereto as in Exhibit A-1 attached hereto (the “**Marina Property**”). Within 180 days after the execution of this Agreement, the Agency will acquire from City the portion of the Marina Property consisting of approximately 17.90 acres described in Exhibit B attached hereto and identified on Exhibit A-2 attached hereto (the “**Conveyed Property**”). At Developer’s election, upon satisfaction of certain conditions precedent, and subject to and in accordance with the terms and conditions of this Agreement, the Agency will convey the Conveyed Property to Developer. The portion of the Marina Property that is retained by the City or the Agency shall be referred to herein as the “**City Property**”.

C. Developer is the owner of the real property located adjacent to the Marina Property, commonly known as the Oyster Point Business Park, and more particularly identified in Exhibit A-1 attached hereto (the “**Business Park Property**”). In addition, Developer has a long-term leasehold interest in a portion of the Marina Property described in Exhibit C (the “**King Lease Property**”) pursuant to Developer’s acquisition of the interests of the original lessee under certain ground leases executed by or on behalf of King Ventures as lessee and the San Mateo County Harbor District (the “**Harbor District**”) as lessor (collectively, the “**King Leases,**” listed in Exhibit C). The underlying fee interest in the King Lease Property is owned by the City. The Harbor District’s authority to enter into the King Leases stems from a joint powers agreement executed by and between the City and the Harbor District that addresses the development, operations, and maintenance of the Marina Property (the “**Harbor District JPA**”). As part of the consideration for Developer’s acquisition of the Conveyed Property, Developer shall terminate those certain King Leases that affect any portion of the Conveyed Property (the “**Terminated King Leases**”) concurrent with Developer’s acquisition of the Conveyed Property. All other King Leases shall be assigned by the Developer to the Agency (the “**Assigned King Leases**”) along with all development rights Developer possesses pursuant thereto.

D. Developer and Agency seek development of the Business Park Property and the Marina Property consistent with the Redevelopment Plan, the Oyster Point Specific Plan adopted by City Ordinance No. 1437-2011 (the “**Specific Plan**”), and the Oyster Point Phase I Precise Plan adopted concurrently therewith by City Resolution No. 48-2011 (the “**Precise Plan**”).

E. Developer and Agency propose a redevelopment project in which Developer will undertake the construction of certain public improvements, and the Agency and the Developer will each provide certain financing to assist in the development of such public improvements, all as more particularly set forth herein. As used in this Agreement, the term “**Redevelopment Project**” refers collectively to Developer’s construction of certain private improvements on the Conveyed Property (the “**Phase ID Improvements**”) and certain public improvements on the Conveyed Property and portions of the City Property (the “**Phase IC Improvements**”), as more particularly described in Section 3.2. Implementation of the Redevelopment Project is part of an overall plan for the intended development of a life sciences campus that is to include research and development facilities, office buildings, public improvements, public amenities and open space on the Conveyed Property and the Business Park Property (collectively, the “**Developer Property**”) consistent with the Specific Plan (collectively, the “**Developer Project**”). The Developer Project is also the subject of a separate Development Agreement between Developer and City, entered substantially concurrently herewith.

F. Independently or pursuant to agreements with third parties, the City and/or the Agency intend to cause the City Property to be developed as a “Ferry Village” that may include retail, commercial, restaurant and hotel uses, public open space/recreational uses and amenities and improvements related to the existing marina (all of the foregoing, collectively the “**City/Agency Project**”). As described below, pursuant to this Agreement, Developer will fund certain components of the City/Agency Project.

G. The Redevelopment Project includes remediation of existing environmental degradation and contamination, including repair or replacement of the cap of a closed municipal landfill located immediately adjacent to the San Francisco Bay and remediation of an industrial sump within that closed municipal landfill. Implementation of the Redevelopment Project will raise the level of certain portions of the closed landfill and its perimeter to counteract the projected effects of sea level rise on the closed landfill and the surrounding property, and protect the environment from potential release of the contents of the landfill into the Bay.

H. The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the construction of public improvements and the redevelopment of the Conveyed Property and the City Property as more particularly set forth herein. In connection with its approval of this Agreement, the Agency has determined that (i) the disposition and development of the Conveyed Property pursuant to this Agreement and the development of the Redevelopment Project and the Developer Project pursuant to the Specific Plan (a) are consistent with the Redevelopment Plan and any implementation plan for the Project Area; (b) will be of benefit to the Project Area; and (c) will further the goals of the Redevelopment Plan by improving the physical appearance of the Project Area, remediating hazardous materials, increasing economic development opportunities, and providing recreational and public amenities; and (ii) the Agency financing described herein is necessary to make construction of the public improvements described herein economically feasible.

I. Pursuant to the California Environmental Quality Act (“CEQA”), on March 23, 2011, the City Council certified a final Environmental Impact Report for the Developer Project and the City/Agency Project and adopted concurrently therewith a Mitigation Monitoring and Reporting Program in connection therewith.

J. The City Council and the Agency have each approved by all requisite actions the disposition of the Conveyed Property as set forth in this Agreement, have followed all requisite procedures, and have adopted all requisite findings in connection with the foregoing, including without limitation the requirements of Sections 33431 and 33433 of the CRL.

K. A material inducement to Agency to enter into this Agreement is the agreement by Developer to enter into this Agreement and to develop the Redevelopment Project and those components of the City/Agency Project that are the responsibility of Developer pursuant to this Agreement within the time periods specified herein and in accordance with the provisions hereof; the Agency would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to take such actions and complete such work in accordance with such provisions and within such time periods.

L. A material inducement to Developer to enter into this Agreement and develop the Redevelopment Project and those components of the City/Agency Project that are the responsibility of Developer pursuant to this Agreement is the Agency’s undertaking the contractual obligation to set aside and commit immediately the monies necessary to meet the Agency’s obligations to provide specific funding for the Redevelopment Project as provided in this Agreement; the Developer would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Agency to take such actions and in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

## ARTICLE I DEFINITIONS

1.1 Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

“Agency Funding Deposit” is defined in Section 3.4.4.

“Agency Phase IC Funding Requirement” is defined in Section 3.4.2.

“Assigned King Leases” is defined in Recital C.

“Business Park Property” is defined in Recital C.

“Certificate of Completion” is defined in Section 6.10.1.

“CFD Proceeds” is defined in Section 3.2.1.



**“City”** means the City of South San Francisco, a municipal corporation.

**“City Council”** means the City Council of the City of South San Francisco.

**“City/Agency Project”** is defined in Recital F.

**“City Property”** is defined in Recital B.

**“Claims”** is defined in Section 6.14.1.

**“Closing Date”** or **“Close of Escrow”** shall be the date selected by Developer with no less than ninety (90) days written notice delivered to the Agency, or such earlier date as agreed to by the Agency and Developer in writing.

**“Conditions of Approval”** is defined in Section 6.2.

**“Conveyed Property”** is defined in Recital B.

**“Contract Documents”** is defined in Section 4.2.1(c).

**“Dedicated Property”** is defined in Section 6.11.1.

**“Developer Construction Plans”** is defined in Section 6.19.

**“Developer Funding Requirement”** is defined in Section 3.4.6.

**“Developer Project”** is defined in Recital E.

**“Developer Property”** is defined in Recital E and means, collectively, the Conveyed Property and the Business Park Property.

**“Development Agreement”** means that certain Development Agreement that will provide certain vested rights with respect to the development of the Developer Property that the Parties anticipate will be executed by and between Developer and City substantially concurrently herewith.

**“Effective Date”** means March 23, 2011, the date on which Agency, City, and Developer have all executed this Agreement.

**“Environmental Laws”** is defined in Section 5.7.2.

**“Financing Plan”** is defined in Section 4.2.1 (b).

**“Harbor District”** is defined in Recital C.

**“Harbor District JPA”** is defined in Recital C.

**“Hazardous Material”** is defined in Section 5.7.1.

**“Hub”** means those certain street and utility improvements as shown on Exhibit 3.2.1.

**“Improvements”** is defined in Section 4.1.2.

**“Improvement Costs”** is defined in Section 3.4.1.

**“Indemnitees”** is defined in Section 6.14.1.

**“King Lease Property”** is defined in Recital C.

**“King Leases”** is defined in Recital C.

**“Marina Property”** is defined in Recital B.

**“MOU”** is defined in Section 2.3.

**“Official Records”** means the Official Records of San Mateo County.

**“Phase IC Improvements”** is defined in Recital E and further described in Section 3.2.1 and Exhibit 3.2.1.

**“Phase IC Improvement Costs”** is defined in Section 3.4.1 and further described in Exhibit 3.2.1.

**“Phase ID Improvements”** is defined in Recital E and further described in Section 3.2.2 and Exhibit 3.2.2.

**“Phase ID Improvement Costs”** is defined in Section 3.4.1 and further described in Exhibit 3.2.2.

**“Phase IIC Improvements”** is defined in Section 3.2.2 (a) and further described in Exhibit 3.3.2.

**“Phase IID, IIID and IVD Improvements”** is defined in Section 3.3.1 and further described in Exhibit 3.3.1.

**“Precise Plan”** means that certain plan for development of the Redevelopment Project known as the Oyster Point Phase I Precise Plan.

**“Project Schedule”** is defined in Section 3.2.

**“Redevelopment Project”** means collectively the development and construction of the Phase IC Improvements described in Section 3.2.1 and the development and construction of the Phase ID Improvements described in Section 3.2.2.

**“Repurchase Option”** is defined in Section 10.12.

**“Right of First Refusal”** is defined in Section 2.5.1.

“**ROFR Contract**” is defined in Section 2.5.1.

“**ROFR Property**” is defined in Section 2.5.1.

“**Specific Plan**” means that certain plan for development of the Developer Property and the City Property entitled Oyster Point Specific Plan, including the Specific Plan Appendix and Design Guidelines.

“**Terminated King Leases**” is defined in Recital C.

“**Third Party**” is defined in Section 2.5.1.

“**Third Party Price and Terms**” is defined in Section 2.5.1.

“**Transfer**” is defined in Section 8.3.

## **ARTICLE II REPRESENTATIONS; EFFECTIVE DATE; INTENT OF AGREEMENT**

2.1 Developer’s Representations. Developer represents and warrants to Agency as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 to be materially untrue, Developer shall immediately give written notice of such fact or condition to Agency. Developer acknowledges that Agency shall rely upon Developer’s representations made herein notwithstanding any investigation made by or on behalf of Agency.

2.1.1 Authority. Developer is a limited liability company, duly organized and in good standing under the laws of the State of Delaware, and in good standing and authorized to do business in California. Developer’s sole members are: (a) SRI Nine Oyster Point, LLC, a limited liability company that is duly organized and in good standing under the laws of the State of Delaware, and in good standing and authorized to do business in California, and (b) SKS Oyster Point, LLC, a limited liability company that is duly organized and in good standing under the laws of the State of Delaware, and in good standing and authorized to do business in California. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement constitutes a valid and binding obligation of Developer, enforceable in accordance with its terms.

2.1.2 No Conflict. Developer’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

2.1.3 No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or, to the best of Developer’s knowledge, has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

2.1.4 No Developer Bankruptcy. Neither Developer nor any of its members is the subject of a bankruptcy or insolvency proceeding.

2.2 Effective Date; Memorandum. The obligations of Developer and Agency hereunder shall be effective as of the Effective Date. Concurrently with the execution of this Agreement, the Parties shall execute a Memorandum of this Agreement substantially in the form attached hereto as Exhibit 2.2 which shall be recorded in the Official Records.

2.3 Intent of this Agreement; Related Agreements. This Agreement sets forth certain rights and obligations of the Parties with respect to the development and financing of the Redevelopment Project. This Agreement is executed pursuant to that certain Memorandum of Understanding (Oyster Point Marina) dated as of May 13, 2009, and executed by and among the City, the Agency and the Developer (the “**MOU**”). In the event of inconsistency between the terms set forth in the MOU and the terms set forth in this Agreement, this Agreement shall prevail.

2.4 Parties. The Parties hereby acknowledge and agree that City joins this Agreement as a Party only with respect to those Sections that expressly set forth rights and/or obligations relating to the City. In no event shall City have any rights or obligations in connection with this Agreement except as expressly set forth in such Sections. Developer and Agency expressly agree that neither shall have any right to make a claim, and shall not make a claim, against the City for any purported obligation of the City under this Agreement except for those obligations which the City explicitly has accepted. For the avoidance of doubt, the City shall have no obligation for procuring or paying for the release of any lien or encumbrance on the Conveyed Property. In addition, Developer expressly and unconditionally releases City from any potential liability arising from the obligations set forth in Sections 5.2 and 5.6.

2.5 Developer’s Right of First Refusal.

2.5.1 The Parties intend for the City Property and the Developer Property to be developed with compatible uses and design. In recognition of the value of maintaining integrated planning and consistency of development, if at any time prior to the earlier of (1) issuance of a certificate of occupancy for the last building to be constructed in connection with the Phase IVD Improvements of the Developer Project as described on Exhibit 3.3.1, or (2) the termination of this Agreement, City or Agency (as applicable) enters into a contract (“**ROFR Contract**”) with a third party (“**Third Party**”) for the sale or long term ground lease (*i.e.*, a ground lease with a term of at least 35 years (including any option periods)) of any portion of the City Property identified on Exhibit 2.5.1 attached hereto and made a part hereof (the “**ROFR Property**”), City or Agency (as applicable) shall deliver a copy of the ROFR Contract to Developer and Developer shall have ten (10) business days after receipt of the ROFR Contract to notify City or Agency (as applicable) in writing of Developer’s election to purchase or lease (as applicable) the ROFR Property for a price equal to the actual amount to be paid by the Third Party under the ROFR Contract and on the material terms and conditions agreed to by the Third Party and City or Agency (as applicable) in the ROFR Contract (“**Third Party Price and Terms**”) (the rights granted to Developer in this Section 2.5 shall be referred to herein as the “**Right of First Refusal**”). Developer’s failure to notify City or Agency (as applicable) of its election within such ten (10) business day period shall be deemed an election by Developer not to purchase or lease (as applicable) the ROFR Property. If Developer elects to purchase or

lease (as applicable) the ROFR Property, then Developer and City or Agency (as applicable) shall enter into a purchase or lease (as applicable) contract for the ROFR Property the terms of which shall be substantially similar to the form of the ROFR Contract with the Third Party Price and Terms (with reasonable allowances for modifications to non-material terms, such as an extension of contingency periods, the closing date or the commencement date). If Developer elects not to purchase or lease (as applicable) the ROFR Property, then City or Agency (as applicable) shall be free to sell or lease (as applicable) the ROFR Property to the Third Party on the material terms of the ROFR Contract, the Third Party Price and Terms; provided that if such sale or lease (as applicable) is not consummated within twelve (12) months after the date of the ROFR Contract, then such sale or lease (as applicable) and any other proposed sale or lease (as applicable) of the ROFR Property shall again be subject to Developer's Right of First Refusal. City or Agency (as applicable) hereby agrees that if Developer exercises the Right of First Refusal, Developer shall have the right to designate an affiliate of Developer as the grantee or lessee (as applicable) of the ROFR Property.

2.5.2 Intentionally Deleted.

2.5.3 At Closing, a memorandum of this Right of First Refusal, in the form attached hereto as Exhibit 2.5.3, shall be executed by City or Agency (as applicable) and recorded against the ROFR Property. Upon such time that Developer no longer has the right to exercise its Right of First Refusal pursuant to the terms of this Section 2.5, Developer shall promptly execute and acknowledge any document reasonably requested by City or Agency (as applicable) to terminate the aforementioned memorandum, including, without limitation, a quitclaim deed.

2.5.4 The provisions of this Section 2.5 and Developer's Right of First Refusal to purchase the Property pursuant to the terms hereunder shall survive the Closing.

**ARTICLE III PROJECT SCOPE AND FINANCING**

3.1 Roles of the Parties and Control of Development. The Parties intend that (i) subject to compliance with the terms and processes set forth in the Oyster Point Specific Plan, applicable precise plans, City's normal design review and building permit procedures and City's right to mandate specifications for improvements that will be publicly owned, Developer shall be in sole control of planning and development of the Redevelopment Project and Developer Project; and (ii) City and Agency shall be in sole control of planning and development of the City/Agency Project. With the exception of the public improvements to be funded by Developer as set forth below in Section 3.3.2, Developer shall have no responsibility for planning, funding, or construction of any portion of the City/Agency Project. Aside from the Agency's funding obligations as set forth in this Agreement, neither City nor Agency shall have any rights to, nor responsibility for, planning or development of any improvements on property owned by Developer.

3.2 Scope of Development. The Parties intend that the Redevelopment Project will be undertaken in phases as described in this Section and Exhibit 3.2A. The project schedule attached as Exhibit 3.2B (the "**Project Schedule**") represents the Parties' reasonable estimates of Redevelopment Project milestones. In no event shall any failure to meet the timeframe set forth in the Project Schedule be considered a default under this Agreement.

3.2.1 Phase IC Improvements. Developer shall cause to be constructed the Phase IC Improvements described in this Section 3.2.1. The Phase IC Improvements are described in greater detail in Exhibit 3.2.1 attached hereto and will be funded in part by the Agency and in part by Developer or, at the option of Developer, with proceeds from a Mello Roos/Community Facilities District (“**CFD Proceeds**”) pursuant to Section 3.4 below. The Phase IC Improvements consist of construction of the following public infrastructure improvements and amenities on portions of the City Property and the Conveyed Property, as more particularly described and identified in Exhibit 3.2.1:

(i) Streets and utilities (including grading, subgrade, base, paving, curb and sidewalk, street lights, storm water, sanitary sewer, combined trench for gas, electric and telecom, impermeable utility trench at sanitary landfill areas, and temporary streets and utilities) in the following locations:

- (1) At the future Hub area;
- (2) Extending east from the Hub across the Marina

Property;

(ii) Repair of and/or upgrade to the clay cap covering the Oyster Point Landfill on specified City-owned parcels and raising the level of certain portions of the Oyster Point Landfill and its perimeter to counteract the projected effects of sea level rise;

(iii) Reconfiguration and reconstruction of existing parking areas on specified City-owned parcels;

(iv) Grading and construction of open space recreation areas on specified City-owned parcels;

(v) Demolition and grading at the future “hotel site” on specified City-owned parcels;

(vi) Landscaping of the beach/park area on specified parcels of the Conveyed Property; and

(vii) Landscaping and other improvements including construction of portions of Bay Trail, public restrooms and palm promenade, on specified City-owned parcels all as shown on that certain Conceptual Site Plan for the Public Realm with Phase One SSKS Development dated February 22, 2011 shown on Exhibit 3.2.1I.

3.2.2 Phase ID Improvements. Developer will construct the Phase ID Improvements described in this Section 3.2.2 on the Conveyed Property. The public improvement/remediation components of the Phase ID Improvements will be financed in part by Developer and, at the option of Developer, in part with CFD Proceeds pursuant to Section 3.4 below. The Phase ID Improvements consist of the following improvements, as more particularly described and identified in Exhibit 3.2.2:

- (i) Repair of the clay cap covering the Oyster Point Landfill on the Conveyed Property;
- (ii) Remediation of the area identified on Exhibit 3.2.2 as “Sump 1”;
- (iii) Installation of methane control and monitoring systems on the Conveyed Property;
- (iv) Other improvements and construction activities necessitated by building on landfill on the Conveyed Property;
- (v) Relocation of refuse on the Conveyed Property to accommodate new buildings; and
- (vi) Development of research and development and/or office buildings on the Conveyed Property consisting of an aggregate of not less than Five Hundred Eight Thousand (508,000) square feet and not more than Six Hundred Thousand (600,000) square feet.

3.3 Additional Development. As of the Effective Date, the parties intend that the development of the City Property and Developer Property will include the additional improvements described in this Section 3.3. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, neither Party shall have any obligation to construct the improvements described in this Section 3.3, or, if such improvements are constructed, to construct them in any particular order or in accordance with any particular schedule. Except for (a) Agency’s obligation to fund the clay cap repair as set forth in Section 3.3.2(a)(iv) below (which the Parties agree is an express obligation of the Agency), and (b) Developer’s obligation to provide funding for certain Phase IIC Improvements, as set forth below, which obligation shall be contingent upon Agency’s determination to proceed with the Phase IIC Improvements pursuant to this Agreement, this Section 3.3 is set forth herein for explanatory purposes only and shall not create any obligations or liabilities on the part of either Party.

3.3.1 Developer Project. In accordance with the Development Agreement approved by City, on approximately forty-two (42) acres of the Business Park Property and the Conveyed Property, Developer intends to develop a life sciences campus that will consist of research and development and office buildings with an aggregate gross square footage of approximately 2.25 – 2.254230 million square feet, together with associated structured parking. The estimated square footage is predicated on a floor area ratio (FAR) of 1.25, taking into account areas that will be (a) reserved for public amenities (including private streets, beach, park, a portion of the Bay Trail, other public rights of way, public open space, public parking areas, and recreational areas), and (b) available for potential future development. In connection with such additional improvements, Developer intends to construct the following public and private improvements in phases (the “**Phase IID, IIID and IVD Improvements**”) which are described in greater detail in Exhibit 3.3.1 attached hereto and which will be partially financed by Developer and partially funded with CFD Proceeds.

- (a) Development of streets and utilities at the Business Park Property;

- (b) Relocation and expansion of capacity of Sewer Pump Station No. 1;
- (c) Landscaping within 100-foot shoreline band at the Business Park

Property; and

(d) Development of buildings for research and development and/or office use so that the FAR across the entire Business Park Property and Conveyed Property (including that portion of the Conveyed Property developed in Phase ID) will be 1.25, comprising a total of up to approximately 2.25 – 2.254230 million gross square feet of such development.

3.3.2 City/Agency Project. City and Agency intend to seek development of the City/Agency Project, including retail, commercial, restaurant and hotel uses, public open space and recreational uses on the City Property. City/Agency may also consider development of research and development and/or office development on the 3.2 acre portion of the City Property currently designated for recreational uses, however, any such development (1) would require additional environmental analysis, (2) may not occur until the earlier of (i) the issuance of a building permit for the second (2<sup>nd</sup>) building in Phase IVD of the Developer Project or (ii) the termination of this Agreement, and (3) would be subject to Developer’s Right of First Refusal as set forth in Section 2.5.

(a) Phase IIC Improvements. If and at such time as City/Agency commence construction of any of the public infrastructure improvements and amenities described in this Section 3.3.2(a) (the “**Phase IIC Improvements**”), Developer and City and/or Agency will each be responsible for funding and/or construction of the Phase IIC Improvements. The Phase IIC Improvements, which are depicted and described in greater detail in Exhibit 3.3.2 attached hereto, will be planned and constructed by City/Agency, and will be funded in part by Developer and in part by City or Agency as described below. Developer’s funding obligations set forth in this Section 3.3.2 shall be conditioned on the City/Agency’s construction of all of the Phase IIC Improvements (rather than a portion thereof) and are inclusive of, and not separate from, the Developer Funding Requirement described in Section 3.4.6 below.

- (i) Developer to fund sewer pump station at the Marina;
- (ii) Agency to fund clay cap repair at specified City Property (Parcel IIC) at the Marina, in accordance with the requirements of the Regional Water Quality Control Board;
- (iii) Agency to fund repaving of existing parking areas at specified City Property (Parcel IIC) at the Marina; and
- (iv) Agency to fund landscaping of certain City Property within the jurisdiction of San Francisco Bay Conservation and Development Commission (“**BCDC**”) on City Parcel IIC.

### 3.4 Financing of Redevelopment Project.

3.4.1 Improvement Costs. The Parties have estimated the cost of the Phase IC Improvements (the “**Phase IC Improvement Costs**”) and the Phase ID Improvements (the



**“Phase ID Improvement Costs”** and, together with the Phase IC Improvement Costs, the **“Improvement Costs”**). The Improvement Costs and the respective Agency and Developer responsibility for payment for each component of the Improvement Costs are detailed in Exhibit 3.4.1 attached hereto. As more particularly described in Exhibit 3.4.1, Agency and Developer each have responsibility to pay for certain components of the public improvements included in Phases IC and ID, including, without limitation, Developer’s obligation to deliver to City an amount equal to One Million One Hundred Thousand Dollars (\$1,100,000) on the date that Developer commences construction of the Phase ID Improvements (commencement of construction as used in the foregoing shall be defined as commencement of excavation for the placement of a foundation for a structure within the portion of the Developer Property to be redeveloped in Phase ID). In addition, as indicated in Exhibit 3.4.1, the Parties intend that certain Improvement Costs may, at the option of Developer, be funded with CFD Proceeds. Nothing in this Agreement is intended to or shall be interpreted as a guaranty by the Agency to make up any shortfall with respect to the availability of CFD Proceeds.

3.4.2 Payment of Phase IC and ID Improvement Costs. Agency will pay an amount equal to Agency’s specified share of the Phase IC Improvement Costs in the aggregate amount, subject to adjustment pursuant to Section 3.4.3 below, of Eighteen Million, Three Hundred Ninety Nine Thousand, Four Hundred Sixty Dollars (\$18,399,460) (the **“Agency Phase IC Funding Requirement”**). Agency shall, at Closing and approximately every three (3) months thereafter, deliver funds into an escrow account that is equal to the estimated amount of Phase IC Improvement Costs that will be incurred by the Developer in the following three (3) month period pursuant to the terms of an Escrow Holdback Agreement in the form attached hereto as Exhibit 3.4.2, to be entered into by and among Agency, Developer and the Title Company at Closing (**“Escrow Holdback Agreement”**). Agency shall periodically deliver such funds within five (5) business days after receipt of written request from Developer, which request shall be accompanied by a description of the work to be completed during such three (3) month period. Any interest accruing on such escrowed funds shall become a part of the escrowed funds and shall be used only in connection with the construction of the Phase IC Improvements.

3.4.3 Allocation of Responsibility; Cost Overruns and Savings. The Parties hereby agree that the allocation of costs and contributions in connection with the Phase IC Improvement Costs and the Phase ID Improvement Costs shall be as set forth on Exhibit 3.4.1, which Exhibit also sets forth which Party shall be responsible for any cost overruns above, and which Party shall be entitled to retain any cost savings below, the estimated costs of such Improvements. Notwithstanding the foregoing, with respect to the Phase IC Improvement Costs associated with streets and utilities at the Hub, as described in Exhibit 3.2.1, any cost overruns shall be shared by the Parties on the proportional basis set forth on Exhibit 3.4.1 based on each Party’s responsibility for funding such streets and utilities, and any cost savings shall be paid by the Parties towards the construction of the Phase IIC Improvements for which the Agency is required to pay. Agency shall apply such cost savings in the following order of priority: first, to complete the clay cap repair in Phase IIC, second, to construct the new sewer pump station, and if any funds remain after completion of the clay cap repair and construction of the pump station, to any other Phase IIC Improvements in the Agency’s discretion. Notwithstanding the foregoing, the City shall pay any additional costs beyond those shown on Exhibit 3.4.1, including without limitation those additional costs that may arise (a) related to the Bay Trail,

palm promenade, and Marina parking lot, including but not limited to increased costs required by BCDC; (b) related to agreements reached with the Harbor District; and (c) related to changes in scope or quality requested or required by City.

3.4.4 Obligation to Set Aside Funds for Agency Funding Requirement; Agency Budget. The Agency Funding Requirement is an indebtedness of the Agency to Developer under this Agreement, and in order to induce Developer to enter into this Agreement, upon execution of this Agreement the Agency agrees that it will set aside immediately in a separate account funds in the amount of the Agency Funding Requirement (“**Agency Funding Deposit**”). Such Agency Funding Deposit shall be held in such account, and without the express written agreement of Developer, shall not be withdrawn or used for any purpose whatsoever, except to pay at the times and in the amounts required to fulfill Agency’s obligation to pay the Agency Funding Requirement. The Agency Funding Deposit initially placed in such separate account may be replaced at a later date with funds lawfully available for that purpose, including, by way or example, proceeds from the issuance of bonds secured by tax-increment from the Redevelopment Project, on and subject to the same terms and limitations applicable to the Agency Funding Deposit. In order to satisfy Agency’s obligations to pay the Agency Funding Requirement without violating any applicable time limits on Agency action pursuant to the Redevelopment Plan, Agency also will take all reasonably necessary actions from time to time, including without limitation, recognition of the Agency Funding Requirement as an indebtedness of the Agency in all financial reports and documents, and inclusion of the Agency Funding Requirement in the Agency’s annual budget, and making prepayments or additional payments if necessary.

3.4.5 [Intentionally Deleted]

3.4.6 Payment of Phase IIC Improvement Costs. The Parties have estimated the cost of the Phase IIC Improvements (the “**Phase IIC Improvement Costs**”). Developer will pay to Agency Developer’s contribution to the Phase IIC Improvement Costs in an amount not to exceed Eight Hundred Thirty-Nine Thousand Four Hundred Ninety Dollars (\$839,490) (the “**Developer Funding Requirement**”) upon Developer’s commencement of construction of the sewer pump station at the Marina. Commencement of construction as used in this Section 3.4.6 shall be defined as commencement of excavation for the placement of a foundation for the sewer pump station. Notwithstanding the foregoing, Agency acknowledges and agrees that Developer will only be obligated to pay the Developer Funding Requirement if (i) Agency has issued Certificates of Completion (defined below) for the Phase IC Improvements and Phase ID Improvements as set forth in Section 3.2.1 and Section 3.2.2; and (ii) City or Agency have commenced construction of all of the Phase IIC Improvements for which Developer has a funding obligation.

3.4.7 Allocation of Responsibility. Agency shall be responsible for payment of all Phase IIC Improvement Costs not required to be paid by the Developer Funding Requirement, and shall pay for any cost overruns above, and shall be entitled to retain any cost savings below, the estimated costs of such Improvements.

**ARTICLE IV    DISPOSITION OF THE CONVEYED PROPERTY; CONDITIONS  
PRECEDENT TO DISPOSITION**

4.1    Property Exchange. Subject to the terms and conditions set forth herein, and provided that all conditions precedent to the conveyance of the Conveyed Property have been satisfied or waived by Agency, at such time as the Parties are prepared to initiate construction of the Phase I Improvements: (i) Developer will assign to City, and City will assume from Developer, Developer's interest in the Assigned King Leases; and (ii) Agency shall convey to Developer, and Developer shall accept from Agency, fee title to the Conveyed Property, in accordance with the terms, covenants and conditions set forth in this Agreement. The conveyance of the Conveyed Property from Agency to Developer shall be accomplished by recordation of the Deed (defined below), and an amendment to the Harbor District JPA in the form attached hereto as Exhibit 4.1 to be entered into between the City and the Harbor District. As used herein, "Conveyed Property" shall include the following:

4.1.1    all rights, privileges and easements appurtenant to the Conveyed Property, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the Conveyed Property, as well as all development rights, air rights, and water rights relating to the Conveyed Property and any rights-of-way or other appurtenances affecting the Conveyed Property (collectively, the "**Appurtenances**");

4.1.2    all of Agency's right, title and interest in and to all improvements and fixtures located on the Conveyed Property, as well as all other apparatus, equipment and appliances used in connection with the operation or occupancy of the Conveyed Property (collectively, the "**Improvements**");

4.1.3    all personal property owned by the Agency located on or in or used in connection with the Conveyed Property and Improvements as of the date hereof and as of the Closing Date (the "**Personal Property**"); and

4.1.4    any intangible personal property now or hereafter owned by the Agency and used in the ownership, use or operation of the Conveyed Property, Improvements and Personal Property, and, to the extent approved by Developer pursuant to this Agreement, any contract rights, utility contracts or other agreements or rights relating to the ownership, use and operation of the Conveyed Property, as defined below (collectively, the "**Intangible Property**").

4.2    Conditions Precedent.

4.2.1    Agency's Conditions Precedent. Agency's obligation to convey the Conveyed Property to Developer is conditioned upon the satisfaction of all of the requirements set forth in each subsection of this Section 4.2.1 unless any such condition is waived by Agency acting in the discretion of its Executive Director. Prior to conveyance of the Conveyed Property, Developer shall satisfy all of the following conditions:

(a)    Due Authorization and Good Standing. Developer shall have delivered to Agency each of the following: (i) certificate of good standing, certified by the Delaware Secretary of State indicating that Developer and Developer's manager or managing

member are properly organized and in good standing in the State of Delaware; (ii) certificate of good standing, certified by the California Secretary of State indicating that Developer and Developer's managing member are in good standing and authorized to do business in the State of California; (iii) a certified resolution indicating that Developer's managing member has authorized the transactions contemplated by this Agreement and that the persons executing this Agreement on behalf of Developer have been duly authorized to do so; (iv) certified copy of Developer's LLC-1; and (v) certified copy of Developer's managing member's LLC-1.

(b) Financing. Developer shall have provided evidence to the Agency, which is commercially reasonably satisfactory, of (a) Developer's acceptance of a loan commitment from a lender or lenders in connection with Developer's financing of the Redevelopment Project, or (b) evidence of the availability of funds from such other alternative sources in connection with the financing of the Redevelopment Project, as reasonably approved by Agency (the "**Financing Plan**"). Developer may obtain, and Agency shall approve, such alternative sources of financing from, without limitation, funds on hand, lines of credit, and/or equity commitments from partners and/or investors. The Parties hereby agree that Agency shall approve of Developer's Financing Plan provided that Developer is able to evidence funding from sources that collectively are sufficient to fund the estimated costs of the Redevelopment Plan.

(c) Contract Documents, Budget and Schedule. City and Agency shall have reasonably approved of the Contract Documents (defined below), budget and schedule for the public improvement components of the Redevelopment Project, which shall be deemed acceptable provided that they are materially consistent with the form of the Contract Documents, budget and schedule delivered to the City and Agency by the Developer prior to the Effective Date. As used herein "**Contract Documents**" means all contract documents upon which Developer and Developer's contractors shall rely in developing the public improvement components of the Redevelopment Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications.

(d) Permits and Entitlements. For the avoidance of doubt, City and Agency confirm that Developer has obtained all known City discretionary entitlements, permits, licenses and approvals required for the development of the Redevelopment Project, but not including permits for demolition, grading, building, or other ministerial approvals, or has provided evidence reasonably satisfactory to Agency that receipt of such permits and approvals is subject only to such conditions as Agency may reasonably approve. City and Agency also confirm that Developer has obtained CEQA and General Plan, Zoning, and Specific Plan-level entitlements for the Redevelopment Project.

(e) Payment of Fees. Subject to any contrary provision of the Development Agreement, Developer shall have paid when due all customary and reasonable fees and charges in connection with the processing of City and all other applicable agency permits and approvals applicable to the Redevelopment Project.

(f) Insurance and Performance Bonds. Developer shall have provided evidence reasonably satisfactory to Agency that Developer has obtained insurance coverage

meeting the requirements set forth in Article VI and shall have provided to Agency performance bonds or other assurance of completion reasonably satisfactory to Agency pursuant to the requirements set forth in Section 6.5.

4.2.2 Developer's Conditions Precedent. Developer's obligation to accept the Conveyed Property from Agency and proceed to Closing is conditioned upon the satisfaction of all of the requirements set forth in each subsection of this Section 4.2.2 unless any such condition is waived by Developer in writing. If any of the conditions are not satisfied, Developer shall have the right in its sole discretion either to waive in writing the condition precedent and proceed with the purchase or terminate this Agreement, in which event Developer and Agency shall each be released from all obligations hereunder, except for such matters that expressly survive the termination of this Agreement. Prior to the Closing Date, the following conditions shall have been satisfied:

(a) Agency's Representations and Warranties. All of Agency's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

(b) Condition of Conveyed Property. The physical condition of the Conveyed Property shall be substantially the same on the day of Closing as on the date of Developer's execution of this Agreement, reasonable wear and tear and construction performed under the terms of this Agreement excepted, and, as of the day of Closing, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened, which after Closing would materially adversely affect the value of the Conveyed Property or the ability of Developer to develop the Conveyed Property in the manner in which it intends.

(c) Permits and Entitlements. Developer shall have obtained all known entitlements, permits, licenses and approvals required for the development of the Redevelopment Project, including without limitation all known permits for demolition, grading, building, or other ministerial approvals.

(d) Financing. Developer shall have received a loan commitment from a lender or lenders, or obtained funds from such other alternative sources, in connection with the financing of the Redevelopment Project, which financing shall be deemed sufficient in Developer's sole and absolute discretion.

(e) Release of Liens. The Agency shall have caused the Conveyed Property to be released from any and all liens or encumbrances related to any loans that encumber the Conveyed Property, including, without limitation, any liens of mortgages, deeds of trust, and financing statements related to that certain Consolidated Loan Agreement by and between the Department of Boating and Waterways and the San Mateo County Harbor District. The Agency hereby agrees that if required by the Department of Boating and Waterways, the Agency shall enter into a guaranty agreement in connection with the release of the Conveyed Property from such liens.

(f) Issuance of Title Policies. The Title Company (defined below) shall be irrevocably and unconditionally committed to issue to Developer the Title Policies, free and clear

of all liens, and subject to only the exceptions expressly set forth therein, and including the endorsements attached thereto.

(g) Easements. The parties shall have agreed upon the form of temporary and permanent easement agreements to be recorded against the Conveyed Property and the City Property at Closing pursuant to which Developer, and its employees, contractors, consultants, agents, invitees and guests shall have access to and from the Conveyed Property, and other easements for utilities serving the Conveyed Property (including, without limitation, potable water, wastewater, storm water, gas, electricity, cable and other services), emergency vehicular access, maintenance easements, and such other easement rights as reasonably required by Developer in connection with its intended development and use of the Conveyed Property.

(h) Insurance. City/Agency shall have provided evidence reasonably satisfactory to Developer that City/Agency has obtained insurance coverage meeting the requirements set forth in Article VI.

4.3 Consideration. The consideration payable by Developer for the Conveyed Property shall be: (i) the conveyance to City of the Assigned King Leases; and (ii) the payment of the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000) (the "**Purchase Price**"). The Assigned King Leases shall be conveyed to Agency at the Close of Escrow. The Purchase Price shall be payable in two (2) installments of Two Million, Two Hundred and Fifty Thousand Dollars (\$2,250,000) each. The first installment shall be payable to Agency at Close of Escrow. The second installment shall be payable in full on the date that Developer obtains the first building permit for a building within Phase IIID.

4.4 Escrow; Escrow Instructions. The Parties shall open escrow at the office of Chicago Title Company at 455 Market Street, 21st Floor, San Francisco, CA 94105, 415-788-0871, Attention: Nicki Carr ("**Title Company**" or "**Escrow Agent**") in order to consummate the conveyance and exchange of property interests contemplated hereby and the closing of escrow for the transactions contemplated hereby (such closing of escrow shall be referred to herein as the "**Closing**"). Agency and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as Agency or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by Agency and Developer, shall serve as escrow instructions for the transactions contemplated hereby. In the event the Closing does not occur on or before the Closing Date, the Escrow Agent shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which were deposited hereunder. Any such return shall not, however, relieve either party of any liability it may have for its wrongful failure to close.

4.5 Costs of Closing and Escrow. Each Party shall pay the cost of any title insurance such Party elects to purchase in connection with the acquisition of the property interests to be acquired by such Party. Developer shall pay all other closing costs and escrow fees (including without limitation recording fees, escrow charges, real estate transfer taxes, and documentary transfer taxes associated with the assignment of the Assigned King Leases to Agency and the conveyance of the Conveyed Property to Developer).

4.6 Closing. At the Closing, the Agency shall convey to Developer marketable and insurable fee simple title to the Conveyed Property, including, without limitation, the Appurtenances and the Improvements, by a duly executed and acknowledged grant deed substantially in the form attached hereto as Exhibit 4.6A (the “**Deed**”). Evidence of delivery of marketable and insurable fee simple title shall be the issuance by Title Company to Developer of the Title Policies (defined below). Each Party shall deposit into escrow executed counterpart originals of assignment and assumption agreements in the form attached hereto as Exhibit 4.6B to effectuate the transfer of Developer’s interests in the Assigned King Leases to Agency (the “**Assignment and Assumption of the King Leases**”). The Terminated King Leases shall be terminated on the Closing Date by the execution and delivery of the Lease Termination Agreements (defined below). On the Closing Date the Escrow Agent shall cause the Deed, the Assignment and Assumption of the King Leases, and the Memorandum to be recorded in the Official Records.

4.6.1 At or before the Closing, Agency shall deliver to Developer or the Title Company, as appropriate, the following:

- (a) a duly executed and acknowledged Deed;
- (b) a duly executed Bill of Sale in the form attached hereto as Exhibit 4.6.1A;
- (c) an Assignment and Assumption of the King Leases executed and acknowledged by the City;
- (d) a duly executed Assignment of Intangible Property in the form attached hereto as Exhibit 4.6.1B (the “**Assignment of Intangible Property**”);
- (e) Lease Termination Agreements terminating the Terminated King Leases, duly executed by the Harbor District and the Agency (the “**Lease Termination Agreements**”);
- (f) an amendment to the Harbor District JPA, eliminating applicability of the JPA to the Conveyed Property in the form attached hereto as Exhibit 4.1;
- (g) a request for partial reconveyance in connection with the Deed of Trust benefiting the Harbor District which currently encumbers the Conveyed Property, duly executed by the California Department of Boating and Waterways, in such form reasonably required by the Title Company in order to release such deed of trust lien from the Conveyed Property and issue the Title Policies to Developer;
- (h) a FIRPTA affidavit (in the form attached as Exhibit 4.6.1C) pursuant to Section 1445(b)(2) of the Internal Revenue Code of 1986 (the “**Code**”), and on which Developer is entitled to rely, that Agency is not a “foreign person” within the meaning of Section 1445(f)(3) of the Code, and a properly executed California Form 593-C;
- (i) agreements to which the City or Agency is a party terminating each and every sublease, license or occupancy agreement affecting the Conveyed Property, duly

executed by each and every subtenant, licensee or party to an occupancy agreement occupying the Conveyed Property;

(j) a closing statement in form and content satisfactory to Developer and Agency;

(k) an affidavit of title and gap indemnity agreement in the Title Company's customary form;

(l) a duly executed and acknowledged Escrow Holdback Agreement;

(m) a duly executed and acknowledged Boundary Line Agreement, or such other agreement reasonably acceptable to the Title Company sufficient to remove any tideland or submerged land exception on the title to the Conveyed Property; and

(n) any other instruments, records or correspondence called for hereunder which have not previously been delivered.

Developer may waive compliance on Agency's part under any of the foregoing items by an instrument in writing.

4.6.2 At or before the Closing, Developer shall deliver to Agency or the Title Company, as appropriate, the following:

(a) a duly executed Assignment and Assumption of the King Leases;

(b) a duly executed Assignment of Intangible Property;

(c) a closing statement in form and content satisfactory to Developer and Agency;

(d) a duly executed and acknowledged Escrow Holdback Agreement; and

(e) the portion of the Purchase Price due and payable at Closing pursuant to Section 4.3 hereof.

(f) agreements to which the Developer is a party terminating each and every sublease, license or occupancy agreement affecting the Conveyed Property, duly executed by each and every subtenant, licensee or party to an occupancy agreement occupying the Conveyed Property;

Agency and Developer shall each deposit such other instruments as are reasonably required by the escrow holder or otherwise required to close the escrow and consummate the purchase of the Conveyed Property in accordance with the terms hereof. Agency and Developer hereby designate Title Company as the "Real Estate Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder.



4.7 Prorations. With respect to the Conveyed Property, Agency shall be entitled to all income produced from the operation of the Conveyed Property which is allocable to the period prior to Closing Date and shall be responsible for all expenses allocable to that period; provided, however, that to the extent any portion of the Conveyed Property is subject to the King Leases prior to Closing, income and expenses for the period prior to the Closing Date shall be governed by the terms of such King Leases. After Closing and the concurrent termination of the Terminated King Leases, Developer shall be entitled to all income and responsible for all costs with respect to the Conveyed Property. With respect to the portion of the Marina Property that is subject to the King Leases but is not a part of the Conveyed Property, income and expenses for the period prior to the Closing Date shall be governed by the terms of such King Leases, and as of 12:01 a.m. on the Closing Date, Agency shall be entitled to all income and responsible for all costs thereafter. At the Closing, all items of income and expense with respect to the Property listed below shall be prorated in accordance with the foregoing principles and the rules for the specific items set forth hereafter:

4.7.1 Utility Charges. Agency shall cause all the utility meters for the King Lease Property and the Conveyed Property to be read on the Closing Date.

4.7.2 Other Apportionments. Amounts payable under the Assumed Contracts, annual or periodic permit and/or inspection fees (calculated on the basis of the period covered), and liability for other property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

4.7.3 Real Estate Taxes and Special Assessments. General real estate taxes payable for the tax year in which the Closing occurs shall be prorated by Agency and Developer as of the Closing Date.

4.7.4 Preliminary Closing Adjustment. Agency and Developer shall jointly prepare a preliminary Closing adjustment on the basis of all sources of income and expenses, and shall deliver such computation to the Title Company prior to Closing.

4.7.5 Post-Closing Reconciliation. If any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other party within ten (10) days after delivery of a bill therefor.

4.7.6 Survival. The provisions of this Section 4.7 shall survive the Closing.

4.8 Representations and Warranties of Agency. Agency hereby represents and warrants to and covenants with Developer as follows:

4.8.1 To the best of Agency's knowledge, the use and operation of the Conveyed Property now are, and at the time of Closing will be, in compliance with all applicable building codes, environmental, zoning and land use laws, and other applicable local, state and federal laws and regulations (collectively, "Laws").

4.8.2 The Due Diligence Documents delivered to Developer in connection with this Agreement (including, without limitation, the Service Contracts) are and at the time of

Closing will be true, correct and complete copies of such documents. Except as shown on Exhibit 4.8.2, and excluding any Service Contracts entered into by Developer in its capacity as the lessee under the King Leases, there are no other Service Contracts affecting the Conveyed Property.

4.8.3 There are no condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or, to Agency's knowledge, planned to be instituted, which would detrimentally affect the use, operation or value of the Conveyed Property.

4.8.4 There is no litigation pending or, after due and diligent inquiry, to the best of Agency's knowledge threatened, against Agency or any basis therefor that arises out of the ownership of the Conveyed Property or that might detrimentally affect the value or the use or operation of the Conveyed Property for its intended purpose or the ability of Agency to perform its obligations under this Agreement.

4.8.5 This Agreement and all documents executed by Agency which are to be delivered to Developer at the Closing are and at the time of Closing will be duly authorized, executed and delivered by Agency, are and at the time of Closing will be legal, valid and binding obligations of Agency enforceable against Agency in accordance with their respective terms, are and at the time of Closing will be sufficient to convey title (if they purport to do so), and do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Agency or the Conveyed Property is subject.

4.8.6 At the time of Closing there will be no outstanding written or oral contracts made by Agency for any improvements to the Conveyed Property which have not been fully paid for and Agency shall cause to be discharged all mechanics' and materialmen's liens arising from any labor or materials furnished to the Conveyed Property prior to the time of Closing.

4.8.7 Agency is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

4.8.8 Except as disclosed on Exhibit 4.8.8, the Conveyed Property is not in violation of any Environmental Laws (defined below). Except as disclosed on Exhibit 4.8.8, neither Agency, nor to the best of Agency's knowledge any third party, has used, manufactured, generated, treated, stored, disposed of, or released any Hazardous Material on, under or about the Conveyed Property. Except as disclosed on Exhibit 4.8.8, neither Agency, nor to the best of Agency's knowledge any third party has installed, used or removed any storage tank on, from or in connection with the Conveyed Property except in full compliance with all Environmental Laws, and to the best of Agency's knowledge there are no storage tanks or wells located on, under or about the Conveyed Property. Except as disclosed on Exhibit 4.8.8, to the best of Agency's knowledge, the Conveyed Property does not consist of any building materials that contain Hazardous Material. The disclosures contained in Exhibit 4.8.8 represent all of the information within Agency's knowledge, control and/or possession relating to the use, manufacture, generation, treatment, storage, disposal or release of Hazardous Material on, under or about the Conveyed Property.

4.8.9 Agency has not granted any option or right of first refusal or first opportunity to any party to acquire any interest in any of the Conveyed Property.

4.8.10 Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

#### 4.9 Condition of Title.

4.9.1 At Closing, Agency shall cause the Title Company to issue Developer ALTA extended coverage owner's policies of title insurance (Form 2006) in the amount of the value of the Conveyed Property as determined in Developer's sole and absolute discretion, at no more than the Title Company's standard rates, insuring fee simple title to the Conveyed Property and all appurtenances and improvements thereon in Developer, in the forms attached hereto as Exhibit 4.9.1, subject only to the exceptions showing in Schedule B thereof and also including all endorsements attached thereto, and incorporating those changes as indicated thereon by handwritten comments, without further revision or amendment except as expressly approved by Developer (the "**Title Policies**"). The Title Policies shall include without limitation full coverage against mechanics' and materialmen's liens. Agency's failure to cause such Title Policies to be issued to Developer in the forms required herein shall be deemed a default under this Agreement, and Developer shall have all of its rights and remedies pursuant to Section 10.6.2 below.

4.9.2 At the Close of Escrow, Developer shall convey to Agency Developer's leasehold interest in the property encumbered by the Assigned King Leases free and clear of all recorded liens, encumbrances, taxes, assessments and leases voluntarily created by Developer during its tenancy under the Assigned King Leases, except as approved in writing by Agency, and Agency shall convey to Developer fee simple title to the Conveyed Property free and clear of all recorded liens, encumbrances, taxes, assessments and leases except as set forth in the Title Policies.

4.10 Feasibility Studies. Developer, City and Agency may undertake additional inspection, review and testing of the Conveyed Property and the King Lease Property, respectively, including without limitation (i) review of the physical condition of such property, including inspection and examination of soils, environmental factors, and archeological information relating to the Conveyed Property; (ii) further review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Conveyed Property; (iii) further evaluation of the Conveyed Property to determine its feasibility for such Party's intended use; and (iv) further review and investigation of any potential relocation costs pursuant to Section 7260 et seq. of the California Government Code. All of the foregoing are hereinafter collectively referred to as "**Feasibility Studies.**" The Parties may consult with or retain civil engineers, contractors, soils and geologic engineers, architects and other specialists in its investigation, and may consult with or retain other consultants to determine if the Conveyed Property is suitable for each Party's intended use. At Close of Escrow, the Conveyed Property and Developer's interest in the King Property shall be conveyed substantially in the respective condition of each as of the Effective Date, reasonable wear and tear and construction permitted by this Agreement excepted.

4.11 Contracts, Reports and Investigations. Developer, City, and Agency each agree to make available within fifteen (15) business days following the Effective Date of this Agreement, any and all additional information (beyond that which each Party has already provided to the other Party), third-party studies, third-party reports, third-party investigations, service contracts, leases, rental agreements and other obligations concerning or relating to the property such Party has agreed to convey pursuant to the this Agreement which are in such Party's possession or which are reasonably available to such Party, including without limitation surveys, third-party studies, third-party reports and third-party investigations concerning the property's physical, environmental, or geological condition, habitability, or the presence or absence of Hazardous Materials in, on or under the property and its compliance with all applicable state and federal environmental laws (collectively, the "**Due Diligence Documents**"). Developer shall advise Agency prior to Closing which of the service contracts Developer will assume at Closing (the "**Assumed Contracts**") and Agency shall terminate as of the Closing Date all such agreements which Developer elects not to assume.

4.12 Right of Entry. Prior to Closing, each Party grants to the other and to such other Party's agents and employees the right, upon reasonable notice, to enter upon the property such Party shall acquire pursuant to this Agreement for the purpose of inspecting, examining, surveying and reviewing such property. Each Party shall obtain the other Party's advance consent in writing to any proposed physical testing of the property, which consent shall not be unreasonably conditioned, withheld or delayed. Each Party shall also obtain any necessary approvals from the Harbor District. Physical tests shall be scheduled during normal business hours unless otherwise approved by the owner of the property to be tested. Each Party agrees to indemnify, defend and hold the other Party harmless from and against all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs of litigation) resulting from such Party's activities pursuant to this Section except to the extent that such liability, loss, cost, damage and expense arises as a result of the negligence or other wrongful conduct of the indemnified Party or the indemnified Party's agents or employees. Notwithstanding anything to the contrary set forth herein, the foregoing indemnity shall not apply to the mere discovery of any pre-existing condition, except to the extent exacerbated by such party. This Section shall survive the expiration or termination of this Agreement and the Close of Escrow.

4.13 Condemnation. If condemnation proceedings are commenced or threatened against any of the Conveyed Property, then, notwithstanding anything to the contrary set forth in this Agreement, Developer shall have the right, at its election, either to terminate this Agreement or to not terminate this Agreement and accept the Conveyed Property. Developer shall have thirty (30) days after Agency notifies Developer that condemnation proceedings are commenced or threatened against any of the Conveyed Property to make such election by delivery to Agency of an election notice (the "**Election Notice**"). Developer's failure to deliver the Election Notice within such thirty (30) day period shall be deemed an election to terminate this Agreement. If this Agreement is terminated by delivery of notice of termination to Agency, then Developer and Agency shall each be released from all obligations hereunder, except for such matters that expressly survive the termination of this Agreement. If Developer elects not to terminate this Agreement, Agency shall give Developer a credit against the first installment of the Purchase Price at the Closing (and, to the extent necessary, the second installment of the Purchase Price) in the amount reasonably determined by Developer and Agency (after consultation with unaffiliated experts) to be the value of any

Property taken as a result of such proceeding, in which case this Agreement shall otherwise remain in full force and effect, and Agency shall be entitled to any condemnation awards.

4.14 Maintenance of the Conveyed Property. Except to the extent such matters are the responsibility of the Developer in its capacity as the lessee under the King Leases, between Agency's execution of this Agreement and the Closing, Agency shall maintain the Conveyed Property in good order, condition and repair, reasonable wear and tear excepted, and shall make all repairs, maintenance and replacements of the Improvements and any Personal Property and otherwise operate the Conveyed Property in the same manner as before the making of this Agreement, as if Agency were retaining the Conveyed Property.

4.15 Developer's Consent to Contracts and Leases Affecting the Conveyed Property; Termination of Existing Contracts.

4.15.1 Agency shall not, after the Effective Date, enter into any new leases or contracts relating to the Conveyed Property, or any amendments thereof, or terminate any lease, or waive any rights of Agency under any contract, without in each case obtaining Developer's prior written consent thereto (which consent shall not be unreasonably withheld).

4.15.2 Agency shall terminate prior to the Closing, at no cost or expense to Developer, any and all Service Contracts affecting the Conveyed Property that are not Assumed Contracts (excluding any Service Contracts entered into by Developer in its capacity as the lessee under the King Leases).

4.15.3 From and after the Effective Date, Agency shall not further encumber the Conveyed Property with any monetary or non-monetary liens or encumbrances.

4.16 Insurance. Through the Closing Date, Agency shall maintain or cause to be maintained, at Agency's sole cost and expense, Agency's existing policy or policies set forth in the ABAG Memorandum of Coverage providing shared risk coverage for the Conveyed Property.

## ARTICLE V ENVIRONMENTAL MATTERS

5.1 Environmental Remediation. The Parties anticipate that development of the Redevelopment Project will require environmental remediation and related geotechnical work, including cleanup of sumps on the Marina Property, a methane monitoring system as set forth in Section 5.3, relocation of refuse, and repair and/or replacement of the clay cap covering the landfill. The Parties agree to allocate costs for these remediation activities as set forth in Exhibit 3.4.1.

5.2 Environmental Indemnification. With respect to preexisting environmental conditions pertaining to the presence of Hazardous Materials and the pre-existing landfill present on the Marina Property ("**Pre-Existing Environmental Conditions**"), including those conditions identified in the documents listed in Exhibit 4.8.8, the Parties intend that, subject to the limitations set forth in this Section, both before and following Developer's acquisition of the Conveyed Property, Agency shall retain responsibility for all such Pre-Existing Environmental Conditions, whether discovered prior to or after the Effective Date. Agency shall indemnify, defend, release, and hold harmless Developer from any and all costs, damages, claims, liabilities or expenses (including, without limitation, reasonable attorneys' fees and disbursements) arising from or

otherwise related to the Pre-Existing Environmental Conditions; provided, however: (i) Developer shall be responsible for payment of the costs incurred in furtherance of the remediation activities described in Section 5.1; and (ii) neither City nor Agency shall have any obligation to defend, indemnify or hold Developer harmless for, and Developer shall be solely responsible for, remediation, damages, penalties, or other costs to the extent arising from or to the extent otherwise related to (a) any release of Hazardous Materials that are brought onto the Conveyed Property by Developer or its employees, contractors, consultants, invitees, agents; or (b) exacerbation of the Pre-Existing Environmental Conditions arising from the negligence, gross negligence, or willful misconduct of Developer's or Developer's employees, contractors, consultants, invitees, or agents or its/their failure to conduct the remediation in compliance with all Applicable Laws.

5.3 Methane and Leachate Monitoring. The Parties intend that City/Agency and/or Harbor District shall retain responsibility for landfill-related methane release monitoring and ground water leachate control monitoring on the City Property and the Developer Property, as well as maintenance, repair, or replacement of the equipment and systems necessary to conduct necessary monitoring, and shall submit any reports required by the local enforcement agency for both the City Property and the Developer Property. Developer will not acquire responsibility to carry out methane monitoring, ground water leachate control monitoring or related maintenance, repair, or replacement on the City Property or Developer Property, or any other environmental assessment, stabilization, remediation, or associated costs related to Pre-Existing Environmental Conditions. Notwithstanding the foregoing, the Parties intend that (i) Developer will fund initial installation of methane monitoring and ground water leachate control monitoring systems on the Conveyed Property; and (ii) Developer will cooperate to the extent reasonably necessary with any methane monitoring and ground water leachate control monitoring activities conducted by City or a third party.

5.4 Environmental Disclosure. Agency hereby discloses certain Pre-Existing Environmental Conditions as more particularly described in the reports listed in Exhibit 4.8.8, copies of which have been provided to Developer. To the extent the Agency has copies of investigation reports, it will provide copies of such reports to Developer upon request; but the Parties acknowledge that Agency will not be conducting a public records search of any regulatory agency files—although the Agency urges Developer to do so to satisfy itself regarding the environmental condition of the Conveyed Property. By execution of this Agreement, except with respect to Agency's express representations and warranties set forth in this Agreement and in the documents delivered by Agency to Developer at Closing, and without limiting Agency's obligations as set forth in this Article V, Developer: (i) acknowledges its receipt of the foregoing notice respecting the environmental condition of the Conveyed Property; (ii) acknowledges that it will have an opportunity to conduct its own independent review and investigation of the Conveyed Property prior to the Close of Escrow; and (iii) agrees to rely solely on its own experts in assessing the environmental condition of the Conveyed Property and its sufficiency for its intended use.

5.5 Property Sold "AS IS." Except with respect to Agency's express representations and warranties set forth in this Agreement and in the documents delivered by Agency to Developer at Closing, Developer specifically acknowledges that the Agency is selling and Developer is purchasing the Conveyed Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from Agency, its employees, board members, agents, or brokers as to any

matters concerning the Conveyed Property. Except with respect to Agency's express representations and warranties set forth in this Agreement and in the documents delivered by Agency to Developer at Closing, the Agency makes no representations or warranties as to any matters concerning the Conveyed Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Conveyed Property; (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater; (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Conveyed Property; (iv) the development potential of the Conveyed Property, and the Conveyed Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Conveyed Property for any particular purpose; (v) the zoning or other legal status of the Conveyed Property or any other public or private restrictions on use of the Conveyed Property; (vi) the compliance of the Conveyed Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vii) the presence or removal of Hazardous Material, substances or wastes on, under or about the Conveyed Property or the adjoining or neighboring property; or (viii) the condition of title to the Conveyed Property.

5.6 Developer to Rely on Own Experts; Limitations on Agency's Environmental Representations and Warranties. Developer understands that notwithstanding the delivery by Agency to Developer of any materials, including, without limitation, third party reports, Developer will rely entirely on Agency's express representations and warranties set forth in this Agreement and in the documents delivered by Agency to Developer at Closing, and Developer's own experts and consultants and its own independent investigation in proceeding with the acquisition of the Conveyed Property. Notwithstanding anything to the contrary set forth in this Agreement, Developer may not bring any action against Agency for a breach of any representation or warranty contained in Section 4.8.8 above unless and until the aggregate amount of all liability and losses arising out of any such breach exceeds One Million Five Hundred Thousand Dollars (\$1,500,000) (provided, however, that once the foregoing threshold amount is met, Developer shall be entitled to recover the entire amount of such losses from Agency). In addition, in no event will Agency's liability for all such breaches exceed, in the aggregate, an amount equal to Four Million Dollars (\$4,000,000). Notwithstanding the foregoing, nothing set forth in this Section 5.6 shall serve to limit, modify or amend Agency's obligations set forth in Section 5.2 above. The provisions of this Section 5.6 shall survive the Closing.

#### 5.7 Definitions.

5.7.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methytertbutyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

5.7.2 “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

## ARTICLE VI DEVELOPMENT OF THE PROPERTY

6.1 Permits and Approvals; City Actions; Cooperation. Developer acknowledges that the execution of this Agreement by City and Agency does not constitute any approval for the Project, and does not relieve Developer from the obligation to apply for and to obtain from City and all other agencies with jurisdiction over the Developer Property, all necessary approvals, entitlements, and permits for the development of the Developer Project (including without limitation, approval of the Developer Project in compliance with CEQA; amendments to the City’s General Plan, the Specific Plan, and the City’s Zoning Ordinance; approval of parcel maps, subdivision maps and/or use permits, as applicable; and authorization, approvals or permits from the U.S. Army Corps of Engineers, the Bay Conservation and Development Commission, the San Francisco Bay Regional Water Quality Control Board, the Bay Area Air Quality Management District, the County of San Mateo Health Services Department and the California Department of Public Health), nor does it limit in any manner the discretion of the City or any other agency in the approval process, except as otherwise set forth in the Development Agreement. Developer covenants that prior to the commencement of any construction, it shall obtain all necessary permits and approvals which may be required by Agency, City, or any other governmental agency having jurisdiction over the Developer Property, and shall not commence construction work on the Redevelopment Project prior to issuance of building permits required for such work. Agency staff shall work cooperatively with Developer in good faith to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

6.2 Design Review; Conditions of Approval. Developer shall develop the Conveyed Property in accordance with the terms and conditions of this Agreement, and any construction shall be in compliance with the terms and conditions of all approvals, entitlements and permits that the



City or any other governmental body or agency with jurisdiction over the Developer Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Redevelopment Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Redevelopment Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

6.3 Intentionally Deleted.

6.4 Development Schedule and Phasing. Following transfer of the Conveyed Property, Developer shall thereafter endeavor to complete construction of the Redevelopment Project and substantially satisfy all other obligations of Developer under this Agreement within the time periods set forth in this Section, unless such time periods are extended upon mutual written consent of the Agency and the Developer based upon a Force Majeure Event (defined below) or as otherwise agreed by the Parties. Without limiting the foregoing, Developer shall commence demolition of the existing improvements on the Conveyed Property within two hundred seventy (270) calendar days following conveyance of the Conveyed Property to Developer, and shall diligently prosecute to completion the development and construction of the Redevelopment Project. Each Party shall use diligent and commercially reasonable efforts to perform the obligations to be performed by such Party pursuant to this Agreement in order to permit issuance of a Certificate of Completion for each Phase of the Redevelopment Project as promptly as feasible

6.5 Performance and Payment Bonds.

6.5.1 Prior to commencement of each phase of the Redevelopment Project, Developer shall cause its general contractor to deliver to the Agency copies of payment bond(s) and performance bond(s) (or other surety instrument acceptable to Agency in its reasonable discretion), issued by a surety reasonably acceptable to the Agency licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction for such phase of the Redevelopment Project (the “**Performance Security**”). The Performance Security shall name the Agency as co-obligee. If, and to the extent Developer is required to post a performance bond or other security in favor of the City pursuant to California Government Code sections 66499-66499.10 to guaranty completion of the Phase IC Improvements (the “**City Security**”), the posting of such City Security shall satisfy the requirements of this Section 6.5 for such Phase IC Improvements.

6.5.2 With respect to the Phase ID Improvements, in lieu of the Performance Security, subject to Agency’s approval of the form and substance thereof, Developer may submit evidence satisfactory to the Agency of Developer’s ability to commence and complete construction of the Phase ID Improvements in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Agency required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Agency. Such evidence must be submitted to Agency in approvable form in sufficient time to allow for Agency’s review and approval prior to the scheduled construction start date.

6.5.3 Upon completion by Developer of any distinct portion of the Redevelopment Project for which a Certificate of Completion is issued, the Agency shall release such portion of the Performance Security that is equal to the ratio of the cost of the completed improvements to the total Improvement Costs within thirty (30) days after receipt of written request from Developer.

6.6 Developer's Insurance Obligations. Except as otherwise stated herein, prior to the commencement of construction for each phase of the Redevelopment Project on the Conveyed Property or any portion thereof or on any portion of the City Property, Developer shall obtain the insurance policies described in this Section 6.6. Except as otherwise stated herein, Developer shall maintain each such policy (or equivalent replacement policy) in effect until the issuance of a Certificate of Completion for the applicable phase of work.

6.6.1 Workers' Compensation. Throughout the term of this Agreement, Developer shall comply with, and shall ensure that Developer's contractors comply with, the laws of the State of California concerning workers' compensation. Without limiting the generality of the foregoing, Developer shall maintain in effect throughout the term of this Agreement, one or more policies of worker's compensation insurance as required by law. Developer's policy shall also include employer's liability coverage in an amount not less than \$1,000,000 per accident.

6.6.2 General Liability Insurance. Developer and the general contractor working on behalf of Developer (or if using multiple prime contracts, each general contractor) on the Redevelopment Project shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement commercial general liability insurance in the amount of \$5,000,000 per occurrence for bodily injury, personal injury, and property damage, products, completed operations, and contractual liability coverage. Such insurance shall be written on an occurrence basis, and shall provide that (i) the Indemnitees shall be named as additional insureds under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by the Agency or by other named or additional insureds will be called upon to cover a loss covered thereunder.

6.6.3 Automobile Liability Insurance. Developer and the general contractor working on behalf of Developer (or if using multiple prime contracts, each general contractor) on the Redevelopment Project shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage. Such insurance shall be written on an occurrence basis, and shall provide that (i) the Indemnitees shall be named as additional insureds under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by the Agency or other named or additional insureds will be called upon to cover a loss covered thereunder.

6.6.4 Course of Construction Insurance. Developer shall obtain at its sole cost and keep in full force and effect throughout the course of construction, Course of Construction insurance with policy limits no less than \$5,000,000, with no coinsurance penalty provisions, and in the standard "Builders Risk" form of policy. The Agency and the City shall be named as

loss payee as their interests may appear, and the insurer shall waive all rights of subrogation against the Agency and City.

6.6.5 Certificates of Insurance. Developer shall file with the Agency, prior to commencement of construction of the Redevelopment Project or any portion thereof, and prior to commencement of construction on the Conveyed Property or the City Property pursuant to this Agreement, certificates of insurance in form acceptable to Agency, evidencing the insurance coverage required pursuant to this Section together with duly executed endorsements evidencing additional insured status as required pursuant to this Section 6.6. Developer hereby agrees to notify Agency of any cancellation, major change in coverage, expiration, termination or nonrenewal of the coverage at least thirty (30) calendar days prior to the effective date of such cancellation or change in coverage (except that only ten (10) calendar days prior notice shall be required for cancellation due to non-payment of premiums). Developer shall deliver copies of the insurance policies to Agency upon receipt of written request from Agency.

6.6.6 Other Requirements. Developer shall also furnish or cause to be furnished to Agency evidence satisfactory to Agency that the general contractor (or if using multiple prime contracts, each general contractor) with whom it has contracted for the performance of work on the Conveyed Property carries the same insurance required of Developer hereinabove, and in the amounts of coverage specified. Companies writing the insurance required hereunder shall be authorized to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name Agency and City as loss payees as their interests may appear.

6.6.7 Reinstatement. If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Agency a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Agency may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse Agency for such reasonable expense upon receipt of billing from Agency.

6.6.8 Primary Coverage; Waiver of Subrogation. Coverage provided by Developer and its general contractor (or if using multiple prime contracts, each general contractor) shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City and Agency.

6.7 City/Agency's Shared Risk Coverage/Insurance Obligations. Except as otherwise stated herein, prior to the commencement of construction of the Phase IIC Improvements, City/Agency shall maintain shared risk coverage under the Memorandum of Coverage with ABAG Plan Corporation (or any commercially reasonable successor shared risk coverage entity selected by the City) or the insurance policies described in this Section 6.7. Except as otherwise stated herein,

City/Agency shall maintain each such policy (or equivalent replacement policy) in effect until the issuance of a Certificate of Completion for the Phase IIC Improvements.

6.7.1 Workers' Compensation. Throughout the term of this Agreement, City/Agency shall comply with, and shall ensure that City/Agency's contractors comply with, the laws of the State of California concerning workers' compensation. Without limiting the generality of the foregoing, City/Agency shall maintain in effect throughout the term of this Agreement, one or more policies of worker's compensation insurance as required by law. City/Agency's policy shall also include employer's liability coverage in an amount not less than \$1,000,000 per accident.

6.7.2 General Liability Shared Risk Coverage. City/Agency and all contractors working on behalf of City/Agency on the Phase IIC Improvements shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement commercial general liability insurance or in the case of the City/Agency shared risk coverage under the Memorandum of Coverage from ABAG Plan (or any commercially reasonable successor shared risk coverage entity selected by the City) in the amount of \$5,000,000 per occurrence for bodily injury, personal injury, and property damage, products, completed operations, and contractual liability coverage. Such insurance or shared risk coverage shall be written on an occurrence basis, and shall provide that (i) Developer shall be named as an additional insured under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by Developer or by other named or additional insureds will be called upon to cover a loss covered thereunder.

6.7.3 Automobile Liability Insurance. City/Agency and all contractors working on behalf of City/Agency on the Phase IIC Improvements shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement automobile liability insurance or in the case of the City /Agency shared risk coverage under the Memorandum of Coverage from ABAG Plan (or any commercially reasonable successor shared risk coverage entity selected by the City) in the amount of \$1,000,000 per occurrence for bodily injury and property damage. Such insurance or shared risk coverage shall be written on an occurrence basis, and shall provide that (i) Developer shall be named as an additional insured under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by Developer or other named or additional insureds will be called upon to cover a loss covered thereunder.

6.7.4 Certificates of Insurance. City/Agency shall provide to Developer, prior to commencement of construction of the Phase IIC Improvements or any portion thereof, certificates of insurance or shared risk coverage evidencing the insurance coverage required pursuant to this Section together with duly executed endorsements evidencing additional insured status as required pursuant to this Section 6.7. Such certificates shall include a statement of obligation on the part of the carrier to notify Developer of any cancellation, major change in coverage, expiration, termination or nonrenewal of the coverage at least thirty (30) calendar days prior to the effective date of such cancellation or change in coverage (except that only ten (10) calendar days prior notice shall be required for cancellation due to non-payment of premiums). City/Agency shall deliver copies of the insurance policies to Developer upon request.

6.7.5 Other Requirements. City/Agency shall also furnish or cause to be furnished to Developer evidence satisfactory to Developer that any contractor with whom it has contracted for the performance of work on the Phase IIC Improvements carries the same insurance required of City/Agency hereinabove, and in the amounts of coverage specified, and each general contractor shall be required to obtain certification of insurance from all subcontractors. Companies writing the insurance required hereunder shall be licensed (or authorized, as applicable) to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Developer as an additional insured.

6.7.6 Reinstatement. If any insurance policy or coverage required hereunder is canceled or reduced, City/Agency shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, provide to Developer a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so provide such certificate, Developer may, without further notice and at its option, procure such insurance coverage at City/Agency's expense, and City/Agency shall promptly reimburse Developer for such reasonable expense upon receipt of billing from Developer.

6.7.7 Primary Coverage; Waiver of Subrogation. Coverage provided by City/Agency and its contractors shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Developer, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of Developer.

6.8 Rights of Access. For the purposes of assuring compliance with this Agreement, representatives of the Agency shall have the reasonable right of access to the Conveyed Property, upon reasonable prior notice to Developer, without charges or fees and at normal construction hours during the period of construction, including, without limitation, for the purpose of conducting inspections at Agency expense of the work being performed in constructing the Phase IC Improvements. Agency representatives shall be identified in writing by the Agency Executive Director or his/her designee. Agency shall minimize any interference with any construction by Developer or Developer's use of the Conveyed Property.

6.9 Equal Opportunity. Developer shall direct its contractors and subcontractors to refrain from unlawful discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Redevelopment Project.

6.10 Certificate of Completion.

6.10.1 Promptly after substantial completion (subject to correction of punch list items) of all construction and development of all or any distinct portion of the Phase IC Improvements or the Phase ID Improvements capable of independent use, Developer shall provide to Agency an instrument so certifying. Upon receipt of such certificate, Agency shall confirm that such portion of the Redevelopment Project has been substantially completed, which confirmation may be based upon inspection by the Chief Building Official and Fire Marshal of

the City, and upon such confirmation shall furnish Developer with a final Certificate of Completion, substantially in the form attached hereto as Exhibit 6.10.1 (“**Certificate of Completion**”). The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of the applicable portion of the Phase IC Improvements and the Phase ID Improvements required to be installed upon the Conveyed Property. Upon completion of all Phase IC Improvements and Phase ID Improvements, Agency shall issue a final Certificate of Completion confirming the completion of the Redevelopment Project. The final Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of San Mateo County.

6.10.2 If Agency refuses or fails to furnish a Certificate of Completion after written request from Developer, Agency shall, within ten (10) business days after receipt of such written request, provide Developer with a written statement of the reasons Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain Agency’s opinion of the action Developer must take to obtain a Certificate of Completion. If Agency shall have failed to provide such written statement within said 10-day period, Developer shall be deemed entitled to the Certificate of Completion, and Agency shall promptly issue such final Certificate of Completion to Developer.

6.10.3 A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Redevelopment Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

6.11 Easements. Developer and City and/or Agency agree to execute and record instruments in form and content acceptable to such Parties over the City Property and the Conveyed Property, granting to the other Party access, utility and maintenance easements in connection with each Party’s proposed use and development of the City Property and the Conveyed Property, as applicable. Each Party agrees to cooperate with the other Party in good faith to identify and prepare such easements to the extent requested by the other Party.

6.11.1 Dedication of Beach/Park Area. Upon Developer’s completion of the landscaping of the beach/park area as identified on Exhibit 6.11.1 (the “**Dedicated Property**”), Developer and City shall enter into an agreement pursuant to which Developer shall dedicate (by conveyance of fee title or an easement) the Dedicated Property to the City for purposes of parks and recreation. Upon completion of such dedication, (i) City (or its designee) shall be solely responsible for the maintenance and repair of all improvements thereon, (ii) City shall be solely responsible for any and all liabilities in connection with the Dedicated Property, including, without limitation, any claims arising out of personal injury or property damage on the Dedicated Property, and (iii) City shall be responsible for any and all costs relating to the Dedicated Property, including, without limitation, the payment of all property taxes and assessments relating to the Dedicated Property.

6.12 Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out the construction of the Redevelopment Project in conformity with all applicable federal,

state and local laws, rules, ordinances and regulations (“**Applicable Laws**”), including without limitation, all applicable federal and state labor laws and standards, all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and subject to the provisions of the Development Agreement anticipated to be executed by the Parties substantially concurrently herewith, applicable provisions of the City’s Zoning Ordinance, building, plumbing, mechanical and electrical codes, and all other applicable provisions of the City’s Municipal Code.

6.13 Agency Disclaimer. Developer acknowledges that the Agency and City are under no obligation, and neither Agency nor City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Phase ID Improvements. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Phase ID Improvements. Any review or inspection of the Phase ID Improvements undertaken by the Agency or the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the Agency or the City as to the quality of the design or construction of the Phase ID Improvements.

6.14 Indemnity.

6.14.1 Developer shall indemnify, defend (with counsel reasonably approved by Agency) and hold Agency, City, and their respective elected and appointed officials, officers, commissions, employees, agents, and representatives (collectively, the “**Indemnitees**”) harmless from and against any and all actual, out-of-pocket liability, loss, fines, penalties, forfeitures, costs, damages (including without limitation attorneys’ fees and costs of litigation), claims, demands, actions, suits, judicial or administrative proceedings, deficiencies, and orders (all of the foregoing collectively “**Claims**”) that directly or indirectly, in whole or in part, are caused by, arise from, or relate to, any of the following:

(a) Developer’s failure to comply in all material respects with this Agreement and/or with all Applicable Laws relating to the construction or operation of the Redevelopment Project.

(b) Developer’s failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including the requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781), whether or not any insurance policies shall have been determined to be applicable to any such Claims.

(c) Defects in the Developer Construction Plans (as defined in Section 6.19) or defects in any work done by Developer or its contractors pursuant to the Developer Construction Plans, whether or not any insurance policies have been determined to be applicable to any such Claims.

(d) Any Claims to attack, set aside, void, or annul any approval by the City or the Agency or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Redevelopment Project or this Agreement. City/Agency will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. If City/Agency fails to promptly notify Developer of any legal action against City/Agency or if City/Agency fails to cooperate in the defense, Developer shall not thereafter be responsible for City/Agency's defense. Agency and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the Agency and/or City choose to do so, Developer shall reimburse Agency and/or City for reasonable attorneys' fees and expenses incurred. In the event City/Agency and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel.

6.14.2 Developer's indemnification obligations set forth in this Section shall not apply to Claims caused by, arising from, or relating to the gross negligence or willful misconduct of the Indemnitees. The provisions of this Section 6.14 shall survive for four (4) years following the latter of the termination of this Agreement or the issuance of the final Certificate of Completion for the Redevelopment Project. It is further agreed that Agency and City do not and shall not waive any rights against Developer which they may have pursuant to this Section 6.14 by virtue of Agency's receipt of any of the insurance policies described in this Agreement.

6.15 Liens and Stop Notices. Until the issuance of a Certificate of Completion for the Redevelopment Project, Developer shall not allow to be placed on the Conveyed Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting Conveyed Property, Developer shall within twenty (20) days of such recording or service: (i) pay and discharge (or cause to be paid and discharged) the same; or (ii) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (iii) provide other assurance reasonably satisfactory to Agency that the claim of lien or stop notice will be paid or discharged.

6.16 Right of Agency to Satisfy Liens on the Conveyed Property. If Developer fails to satisfy or discharge any lien or stop notice on the Conveyed Property (following conveyance of such property to Developer) or on any City Property on which Developer is undertaking work pursuant to this Agreement in accordance with Article III above or fails to provide reasonable assurance to Agency with respect to the same, the Agency shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer. In such event Developer shall be liable for and shall promptly reimburse Agency for such paid lien or stop notice. Alternatively, the Agency may require Developer to immediately deposit with Agency the amount necessary to satisfy such lien or claim pending resolution thereof. The Agency may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Redevelopment Project for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Conveyed Property or the Redevelopment Project improvements. The Agency may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Agency deems necessary or desirable to protect its interest in the City Property.



6.17 Subordination. Any lien created or claimed under the provisions of this Agreement shall expressly be made subject and subordinate to the rights of any lender providing funds used for financing the acquisition or development of the Conveyed Property.

6.18 Prevailing Wage Requirements. To the full extent required by applicable federal and state law, Developer and its contractors, subcontractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (“**Prevailing Wage Laws**”), and shall be responsible for carrying out the requirements of such provisions. This requirement is applicable to all development located on the Conveyed Property and/or the City Property and any infrastructure constructed that benefits the Conveyed Property and/or the City Property that is in whole or part paid for with tax increment funds or other sources of public funds. Developer covenants to take no action which would cause Agency to violate the Prevailing Wage Laws.

If applicable pursuant to Prevailing Wage Laws, the hourly and daily rate of wages to be paid to each of the classes of mechanics and workers employed in connection with construction of the Redevelopment Project shall not be less than the rate of such wages then prevailing in San Mateo County. If Prevailing Wage requirements apply to any portion of the Redevelopment Project, Developer agrees to and shall forfeit, as a penalty to Agency, the sums established and applicable pursuant to California Labor Code Section 1720 *et seq.* for each calendar day or portion thereof that each worker employed in connection with the Redevelopment Project is paid less than the rates designated in this paragraph for any work pursuant to this Agreement performed by or on behalf of Developer.

6.19 Construction Plans. Developer shall submit to City’s Building Department construction plans for those portions of the Developer Project that are also within the Redevelopment Area, and for which Developer is primarily responsible for designing, financing and constructing as identified in Exhibit 3.2.2 (the “**Developer Construction Plans**”).

6.20 Construction Pursuant to Plans. Any development of the Redevelopment Project shall be in accordance with the approved Contract Documents and/or applicable Developer Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City and/or the Agency pertaining to the Project. Developer shall comply with all lawful directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Conveyed Property or the Redevelopment Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Redevelopment Project shall be performed by licensed contractors, engineers or architects, as applicable.

6.21 Defects in Developer Construction Plans. Neither Agency nor City shall be responsible to Developer or to any third party for any defect in the Developer Construction Plans or for any structural or other defect in any work done pursuant to the Developer Construction Plans.

## ARTICLE VII USE OF THE PROPERTY

7.1 Maintenance. Following conveyance to Developer, Developer shall at its own expense, maintain the Conveyed Property, including the landscaping, in good physical condition, in good repair, and in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Developer shall use reasonable efforts to maintain the Conveyed Property in a condition substantially free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable actions to prevent the same from occurring on the Conveyed Property. Developer shall prevent and/or rectify any substantial physical deterioration of the Conveyed Property and shall make all repairs, renewals and replacements necessary to keep the Conveyed Property and the improvements located thereon in good condition and repair, reasonable wear and tear and construction permitted by this Agreement excepted.

7.2 Taxes and Assessments. After Closing, Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Conveyed Property and payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Conveyed Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

7.3 Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Conveyed Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself, its transferees and assigns, and all persons claiming under or through it or them, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Conveyed Property or part thereof, nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Conveyed Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer and shall enforce the same diligently and in good faith.

All deeds (excluding mortgages or deeds of trust), leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Conveyed Property or the improvements located thereon shall contain the following language:

7.3.1 In deeds (excluding mortgages or deeds of trust), the following language shall appear:

“Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.”

7.3.2 In Leases, the following language shall appear:

“The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.”

7.3.3 In Contracts, the following language shall appear:

“There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

## **ARTICLE VIII LIMITATIONS ON TRANSFERS, CHANGE IN OWNERSHIP AND CONTROL OF DEVELOPER**

8.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out

the Redevelopment Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the Agency. It is because of these qualifications, experience, financial capacity and expertise that the Agency has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

## 8.2 Transfers Not Requiring Approval.

8.2.1 Entities Controlled by Developer. Notwithstanding any contrary provision hereof, Developer shall be permitted to assign this Agreement without Agency consent to an entity or entities controlling Developer (or either member of Developer), controlled by Developer (or by either member of Developer) or under common control with Developer (or either member of Developer), provided that Developer (or either member of Developer) owns and controls no less than fifty percent (50%) of such successor entity. Furthermore, notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent, and Agency approval shall not be required for: (i) the granting of easements or permits to facilitate development of the Conveyed Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of commercial space to individual tenants; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Redevelopment Project or the Conveyed Property, and subject to the requirements of Article IX, Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

8.2.2 Non-assuming Transferees. Notwithstanding any contrary provision hereof, at any time following the commencement of demolition of existing improvements on the Conveyed Property, Developer shall be permitted to complete a Transfer of certain Conveyed Property in accordance with this Section 8.2.2. Except as otherwise required by Developer in Developer's sole discretion, either concurrently with or following any such transfer, the development rights of Developer under this Agreement shall terminate with respect to, and Agency's consent shall not be required in connection with, the Transfer of that portion of the Conveyed Property to be developed in Phase IID (the "**Phase IID Property**"), or any portion thereof, and that has been created as one or more separate legal parcels for uses permitted under this Agreement. The transferee in such a transaction and its successors ("**Non-Assuming Transferees**") shall be deemed to have no obligations under this Agreement. A Transfer of the Phase IID Property, or any portion thereof, to a Non-Assuming Transferee shall have no effect on Developer's obligations to complete the Redevelopment Project pursuant to this Agreement, nor shall it have any effect on Developer's rights with respect to the remaining Conveyed Property not subject to such a Transfer.

8.3 Limitation on Transfer. Except in accordance with this Article VIII, prior to the completion of the Redevelopment Project, Developer shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Conveyed Property or this Agreement, without the prior written approval of Agency, which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the Agency's consent

shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the completion of the Redevelopment Project, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of Agency, which approval shall not be unreasonably delayed, conditioned, or withheld. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of fifty-one percent (51%) or more in aggregate of the present ownership and/or control of Developer, taking all transfers into account on a cumulative basis, but specifically excluding transfers of the beneficial interests of the members of Developer to other members and/or the affiliates of members.

8.4 Request for Approval; Notice. For any Transfer that requires Agency’s approval, Developer shall notify Agency in writing of its request for consent, which notice shall include: (i) the proposed effective date of Transfer or assignment (which shall not be less than forty-five (45) days nor more than three hundred sixty-five (365) days after Developer’s notice); (ii) the name and address of the proposed transferee; (iii) current, audited financial statements of the proposed transferee certified by an officer, partner, or owner thereof and any other relevant information pertaining to the proposed transferee’s qualifications or financial capabilities, and development capacity that Agency may reasonably and timely request; and (iv) the instruments and other legal documents proposed to effect any Transfer of this Agreement, the Conveyed Property or interest therein. The transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement arising after the effective date of the Transfer with respect to the property conveyed to the transferee and all obligations of Developer with respect thereto arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations, either in the applicable assignment documents or by virtue of its failure to obtain a release contemplated in Section 8.6.1) and shall agree to be subject to all other terms and conditions set forth in this Agreement.

8.5 Approval. Agency may refuse to give its consent to a proposed Transfer only if, in light of the proposed transferee’s development experience and financial resources, such transferee would not, in Agency’s reasonable opinion, be able to perform the obligations proposed to be assumed by such transferee. In making such determination, Agency shall evaluate: (i) the financial ability of the proposed transferee to own and develop the Conveyed Property, or portion thereof so transferred; and (ii) the experience of the proposed transferee and its senior managerial personnel to develop the Conveyed Property or portion thereof so transferred. Notwithstanding the foregoing, Agency shall not withhold its consent to a proposed Transfer if the proposed transferee meets the following qualifications: (1) the proposed transferee shall have a good reputation as a developer in the office or research and development building community; (2) the proposed transferee shall have a reputation for fair and honest business dealings with persons or entities generally; (3) the proposed transferee’s objectives with respect to development of the Conveyed Property it would be acquiring pursuant to the transfer do not differ materially from those of Developer; and (4) the proposed transferee has a net worth sufficiently sound and strong to undertake and complete the obligations to be performed by Developer pursuant to the terms of this Agreement. In any case where consent to a proposed Transfer is requested, Agency’s approval shall not be unreasonably delayed, conditioned, or withheld. Failure of Agency to notify Developer in writing of its consent or disapproval within thirty (30) calendar days of written notification by Developer to Agency of a proposed Transfer shall be deemed to be an approval of the proposed Transfer. Consent to any proposed Transfer may

be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board.

#### 8.6 Effect of Transfer without Agency Consent.

8.6.1 In the absence of specific written agreement by the Agency, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

8.6.2 If, in violation of this Agreement, the Developer Transfers all or any part of the Conveyed Property prior to the recordation of the Certificate of Completion for the Project, the Agency shall be entitled to receive from Developer the amount by which the consideration payable for such Transfer exceeds the sum of (i) the purchase price paid by the Developer to the Agency for the Conveyed Property, and (ii) the costs incurred by Developer in connection with the improvement and development of the Conveyed Property, including carrying charges, interest, fees, taxes, assessments and escrow fees through the date of such Transfer. Such excess consideration shall belong to and be paid to the Agency by the Developer and until so paid, the Agency shall have a lien on the Conveyed Property (which lien shall be subordinate to any mortgage or deed of trust liens affecting the Conveyed Property) for such amount. The provisions of this Section 8.6.2 have been agreed upon so as to discourage land speculation by Developer; accordingly, these provisions shall be given a liberal interpretation to accomplish that end. Following the recordation of the Certificate of Completion, the provisions of this Section 8.6.2 shall have no further force and effect.

8.7 Recovery of Agency Costs. Developer shall reimburse Agency for all reasonable and necessary Agency costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within thirty (30) days following Agency's delivery to Developer of an invoice detailing such costs. Notwithstanding the foregoing, in no event shall such costs exceed Fifteen Thousand Dollars (\$15,000) per Transfer request.

8.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Subject to approval by Agency as to qualifications and financial capabilities of Developer's assignee pursuant to Section 8.5 above, Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement to any third party or parties acquiring an interest or estate in the Redevelopment Project or any portion thereof including, without limitation, purchasers or ground lessees of lots or parcels.

### **ARTICLE IX SECURITY FINANCING AND RIGHTS OF MORTGAGEES**

9.1 Subordination. Any lien created or claimed under the provisions of this Agreement shall expressly be made subject and subordinate to the rights of any lender who provides financing to Developer for the acquisition or development of the Conveyed Property (each, a "**Mortgagee**").

9.2 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument, are permitted to be placed upon the Conveyed Property

for the purpose of securing loans for financing the acquisition of the Conveyed Property, the design and construction of the Improvements, and any other expenditures necessary for, or incurred in connection with, the development of the Conveyed Property pursuant to this Agreement. As used herein, the terms “**Mortgage**” shall mean any security instrument used in financing real estate acquisition, construction and land development.

9.3 Holder Not Obligated to Construct. The holder of any Mortgage authorized by this Agreement shall not be obligated to complete construction of the Improvements or to guarantee such completion. Nothing in this Agreement shall be deemed to permit or authorize any such Mortgagee to devote the Conveyed Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement. No Mortgagee of Developer shall become personally liable for the performance or observance of any covenants or conditions to be performed by Developer hereunder unless and until such Mortgagee acquires Developer’s interest in the Conveyed Premises and enters into a new agreement with the Agency. Agency agrees that any such Mortgagee may sell, assign or otherwise dispose of its fee interest hereunder to which it has so succeeded or which it has so acquired. Upon any such sale, assignment or disposition, such Mortgagee shall be released from all obligations and liabilities of Developer whatsoever arising under this Agreement from and after the date of such sale, assignment or disposition provided that the purchaser, assignee, or transferee signs the Assumption Agreement attached hereto as Exhibit 9.3.

9.4 Notice of Default and Right to Cure. Whenever Agency delivers any notice of: (i) default under this Agreement, (ii) a termination of this Agreement, or (iii) a matter on which Agency may predicate or claim a default hereunder, Agency shall concurrently deliver a copy of such notice to each Mortgagee of record. No such notice by Agency to Developer shall be deemed to have been duly given unless and until a copy thereof has been so provided to each Mortgagee of record. In the event of any new Mortgage, the assignment of an existing Mortgage or in the event of a change of address of a Mortgagee or of an assignee of such Mortgagee, notice of the new name and address, as applicable, shall be provided to Agency. Each such Mortgagee shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Developer extended by an additional sixty (60) days. Agency shall accept such performance by or at the instigation of such Mortgagee as if the same had been done by Developer. Developer authorizes each Mortgagee to take any such action at such Mortgagee’s option and does hereby authorize entry upon the Conveyed Property by the Mortgagee for such purpose. In the event that possession of the Conveyed Property (or any portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Conveyed Property or Improvements, as applicable, within sixty (60) days after receipt of the Agency’s notice, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A Mortgagee who chooses to exercise its right to cure or remedy a default or breach shall first notify Agency of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such Mortgagee to undertake or continue the construction of the Redevelopment Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer’s obligations to Agency under this Agreement. The Mortgagee in that event must agree to complete, in the manner provided in this Agreement, the Redevelopment Project and the Improvements and submit evidence reasonably satisfactory to Agency that it has the

development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such Mortgagee properly completing the Redevelopment Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement and shall be entitled to a Certificate of Completion upon compliance with the requirements of this Agreement.

9.5 Limitations on Termination of the Agreement. Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles Agency to terminate this Agreement, Agency shall have no right to terminate this Agreement unless, following the expiration of the period of time given Developer to cure such default, Agency shall notify every Mortgagee of record of Agency's intent to so terminate at least 45 days in advance of the proposed effective date of such termination if such default is capable of being cured by the payment of money, and at least 60 days in advance of the proposed effective date of such termination if such default is not capable of being cured by the payment of money (a "**Termination Notice**"). The provisions of Section 9.6 below shall apply if, during such 45 or 60 day period, any Mortgagee shall:

- (1) notify Agency of such Mortgagee's desire to avoid the termination of the Agreement; and
- (2) pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the Termination Notice to such Mortgagee and which may become due during such 30 or 60-day period, and
- (3) comply or in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Agreement then in default and reasonably susceptible of being complied with by such Mortgagee, *provided however*, that such Mortgagee shall not be required during such 60-day period to cure or commence to cure any default consisting of Developer's failure to satisfy and discharge any lien, charge or encumbrance against the Developer's interest in this Agreement or the Conveyed Property junior in priority to the lien of the Mortgage held by such Mortgagee, or any other default that is not reasonably susceptible of being cured without possession of the Conveyed Property.

9.6 Procedure on Default.

9.6.1 If Agency shall elect to terminate this Agreement by reason of any default of Developer, and a Mortgagee shall have proceeded in the manner provided for by Section 9.5 above, the specified date for the termination of this Agreement as fixed by Agency in its Termination Notice shall be extended for a period of six (6) months, provided that such Mortgagee shall, during such six (6) month period:

- (a) Pay or cause to be paid the rent, additional rent and other monetary obligations of Developer under this Agreement as the same become due, and continue its good faith efforts to perform all of Developer's other obligations under this Agreement, excepting



(i) obligations of Developer to satisfy or otherwise discharge any lien, charge or encumbrance against Developer's interest in this Agreement or the Conveyed Property junior in priority to the lien of the Mortgage held by such Mortgagee, (ii) nonmonetary obligations not reasonably susceptible of being cured by such Mortgagee, and (iii) any other default that is not reasonably susceptible of being cured without possession of the Conveyed Property; and

(b) if not enjoined or stayed, take steps to acquire or sell Developer's interest in this Agreement by foreclosure of the Mortgage or other appropriate means and prosecute the same to completion with due diligence.

9.6.2 If at the end of such six (6) month period such Mortgagee is complying with Section 9.6.1, this Agreement shall not then terminate, and the time for completion by such Mortgagee of its proceedings shall continue so long as such Mortgagee is enjoined or stayed and for so long as such Mortgagee proceeds to complete steps to acquire or sell Developer's interest in this Agreement by foreclosure of the Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing contained herein shall be construed to require a Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the Mortgagee shall discontinue such foreclosure proceedings, this Agreement shall continue in full force and effect as if Developer had not defaulted under this Agreement.

9.6.3 If a Mortgagee is complying with Section 9.6.1, upon the acquisition of Developer's fee interest in the Conveyed Property by such Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise, this Agreement shall continue in full force and effect as if Developer had not defaulted under this Agreement.

9.6.4 For the purposes of this Article IX, the making of a Mortgage shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement, nor shall any Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement so as to require such Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Developer to be performed hereunder, but the purchaser at any sale of the Conveyed Property in any proceedings for the foreclosure of any Mortgage, or the assignee or transferee of this Agreement under any instrument of assignment or transfer in lieu of the foreclosure of any Mortgage shall be deemed to be an assignee or transferee within the meaning of this Article IX, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Developer to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the Conveyed Property.

9.6.5 Any Mortgagee or other acquirer of the Conveyed Property pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the Conveyed Property, without further consent of Agency, sell and assign the Conveyed Property on such terms and to such persons and organizations as are acceptable to such Mortgagee or acquirer and thereafter be relieved of all obligation under this Agreement; provided that such assignee has delivered to Agency its written agreement to be bound by all of the provisions of this Agreement.

9.6.6 Notwithstanding any other provisions of this Agreement, any sale of the Conveyed Property in any proceedings for the foreclosure of any Mortgage, or the assignment or transfer of this Agreement in lieu of the foreclosure of any Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Agreement.

9.7 New Agreement. In the event of the termination or rejection of this Agreement as a result of Developer's default, as a result of any election under any laws relating to bankruptcy or insolvency, or as a result of any other cause, Agency shall deliver to each Mortgagee a written notice that the Agreement has been terminated (a "**Notice of Termination**"). Agency agrees to enter into a new agreement ("**New Agreement**") with such Mortgagee or its designee upon the terms, covenants and conditions of this Agreement, provided:

9.7.1 Such Mortgagee shall make written request upon Agency for such New Agreement within 60 days after the date such Mortgagee receives Agency's Notice of Termination.

9.7.2 Any New Agreement made pursuant to this Section 9.7 shall be prior to any Mortgage or other lien, charge or encumbrance on the fee of the Conveyed Property, and the developer under such New Agreement shall have the same right, title and interest in and to the Conveyed Property and the buildings and improvements thereon as Developer had under this Agreement.

9.7.3 The developer under any such New Agreement shall be liable to perform the obligations imposed on such developer by such New Agreement only during the period such person has ownership of the Conveyed Property.

9.8 New Agreement Priorities. If more than one Mortgagee shall request a New Agreement pursuant to Section 9.7, Agency shall enter into such New Agreement with the Mortgagee whose Mortgage is prior in lien, or with the designee of such Mortgagee.

9.9 Mortgagee Need Not Cure Specified Defaults. Nothing herein contained shall require any Mortgagee or its designee as a condition to its exercise of right hereunder to cure any default of Lessee not reasonably susceptible of being cured by such Mortgagee, in order to exercise any rights available to such Mortgagee hereunder.

9.10 Agency Right to Cure Defaults. In the event of a breach or default by Developer under a Mortgage secured by the Conveyed Property, Agency may cure the default, without acceleration of the subject loan, following prior notice thereof to the Mortgagee of such instrument and Developer. In such event, Developer shall be liable for, and Agency shall be entitled to reimbursement from Developer for all costs and expenses incurred by Agency associated with and attributable to the curing of the default or breach.

9.11 Holder to be Notified. Developer agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant Mortgage or acknowledged by the holder prior to its creating any security right or interest in the Conveyed Property or the Improvements.

9.12 Modifications to Agreement. Agency shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter Agency's substantive rights and obligations under this Agreement.

9.13 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case); (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

9.14 Participation in Insurance and Condemnation Proceedings. It is agreed, notwithstanding any provisions contained in the Agreement to the contrary, that, at all times while a Mortgage remains in effect, all policies of insurance called for in this Agreement or otherwise in effect for the Conveyed Property shall, in addition to any provisions required under this Agreement, contain a standard mortgagee protection endorsement, and the Mortgagee under such Mortgage shall be entitled to hold the originals or certificates of all such policies. Such Mortgagee shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of such Mortgagee. In addition, at all times while a Mortgage remains in effect, the Mortgagee under such Mortgage shall have the right to participate in any settlement or stipulation of judgment with respect to any condemnation proceeding affecting all or any portion of the Conveyed Property or any agreement to sell all or any portion of the Conveyed Property in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without such Mortgagee's prior written consent.

## ARTICLE X     DEFAULTS, REMEDIES AND TERMINATION

10.1 [Intentionally Deleted]

10.2 Event of Developer Default. The occurrence of any of the following shall, upon expiration of the applicable cure period, constitute a "**Developer Event of Default**":

10.2.1 Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights therein or in the Conveyed Property and/or the Improvements in violation of Article VIII;

10.2.2 There is a change in the ownership or identity of Developer or the parties in control of Developer or the degree thereof in violation of Article VIII;

10.2.3 Developer does not maintain the necessary equity capital and mortgage financing for the acquisition and development of the Conveyed Property as set forth in the Financing Plan, and fails to cure such default within sixty (60) days following receipt of written notice from Agency;

10.2.4 Following Closing, and prior to the issuance of a Certificate of Completion, a default or breach arises under any loan secured by a mortgage, deed of trust or

other security instrument recorded against the Conveyed Property or part thereof and remains uncured beyond any applicable cure period such that the holder of such security instrument has exercised or given notice of its intent to exercise the right to accelerate repayment of such loan;

10.2.5 Intentionally deleted.

10.2.6 Following Closing, and after the construction of any improvements has commenced, Developer abandons or suspends construction of any Phase of the Redevelopment Project prior to completion of such Phase of construction, without Agency consent, for a period of one hundred and eighty (180) days, unless such delay or suspension is due to Force Majeure Events as specified in Section 11.2 or due to the written request of City or Agency.

10.2.7 Following Closing, Developer fails to maintain insurance on the Conveyed Property and the Redevelopment Project as required by Article VI and fails to cure such default within ten (10) days following receipt of written notice from Agency;

10.2.8 Following Closing, Developer fails to pay taxes or assessments due on the Conveyed Property or the Redevelopment Project or fails to pay any other charge that may result in a lien on the Conveyed Property or the Redevelopment Project, and Developer fails to cure such default within thirty (30) days following receipt of written notice from Agency;

10.2.9 Any representation or warranty contained in this Agreement or in any financial statement or certificate submitted to Agency in connection with this Agreement is known to Developer to be and proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Agency;

10.2.10 Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Conveyed Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

10.2.11 A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Developer to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for either of the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction; (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties; or (iv) directing the winding up or liquidation of the Developer;

10.2.12 If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Developer or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an

assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

10.2.13 Developer fails to pay when due any sum payable by Developer to City or Agency pursuant to this Agreement, and such failure continues for thirty (30) days after Agency notifies Developer thereof in writing;

10.2.14 Developer shall voluntarily suspend its business or shall have been dissolved or terminated; or

10.2.15 Developer defaults in the performance of any material term, provision, covenant or agreement contained in this Agreement, other than an obligation enumerated in this Section 10.2, and excluding Developer's failure to perform the Closing Obligation specified in Section 10.10. Notwithstanding anything to the contrary set forth in this Agreement, the Parties hereby acknowledge and agree that with respect to the Closing Obligation described in Section 10.10 below, the remedies set forth in Section 10.10.2(c) shall be Agency's sole and exclusive remedies, and that Agency shall not have any other remedies set forth in this Article X.

10.3 Agency Event of Default. Provided that the Developer has satisfied its obligations hereunder, the following events shall constitute a breach or default by Agency (each, an "**Agency Event of Default**"):

10.3.1 Agency, without good cause, fails to convey the Conveyed Property to Developer within the time and in the manner set forth in Article IV and Developer is otherwise entitled to such conveyance; or

10.3.2 Agency fails to meet any of its funding obligations under the Agency Phase IC Funding Requirement, including a failure to periodically deliver any funds pursuant to Section 3.4.2 above; or

10.3.3 Agency or City (as applicable) conveys or leases, or attempts to convey or lease, any portion of the City Property to any third party in violation of Developer's Right of First Refusal as set forth in Section 2.5; or

10.3.4 Agency breaches any other material provision of this Agreement and fails to cure such breach within any applicable cure period.

10.4 Notice; Cure of Default. In the event of an alleged default or breach of any of the terms or conditions of this Agreement (other than the Closing Obligation), the Party alleging such default or breach shall give the other Party notice in writing specifying the nature of the alleged default and the manner in which the default may be satisfactorily cured. The notice shall specify a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days in the event of a monetary default or sixty (60) days in the event of a nonmonetary default (unless a shorter cure period is specified in Section 10.2 above); provided, however, that or if the default is of a nature that it cannot reasonably be cured within sixty (60) days, an Event of Default shall not arise hereunder if the defaulting Party commences to cure the default within sixty (60) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred twenty (120) days after receipt of notice of the default.

Delay in giving such notice shall not constitute a waiver of any default or of any such rights or remedies or deprive such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies; provided, however, that in no event shall the injured Party terminate this Agreement or institute any legal proceeding against the Party in default without provision of notice of default and expiration of the applicable cure period.

10.5 Right to Terminate Agreement. If an Event of Default shall occur and be continuing beyond any applicable cure period, then the non-defaulting Party shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement and the rights of the defaulting Party and its assignees hereunder. If the non-defaulting Party makes such election, that Party shall give written notice to the defaulting Party and, if such notice is provided to Developer, to any Mortgagee entitled to such notice, specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of the defaulting Party under this Agreement, shall expire and terminate, except for such matters that expressly survive the termination of this Agreement.

10.6 Remedies; Specific Performance; Limitation on Damages.

10.6.1 Agency's Rights. Upon the occurrence of a Developer Event of Default and the expiration of any applicable cure period, Agency shall have the right, in addition to any other rights or remedies provided in this Agreement and subject to any applicable restrictions set forth in this Agreement, to institute an action in accordance with Section 10.15 to seek specific performance of the terms of this Agreement, or to cure, correct, prevent or remedy any default, or to recover damages, or to obtain any other remedy available to Agency at law or in equity consistent with the purpose of this Agreement; provided, however, (i) Agency acknowledges and agrees that the remedies set forth in Section 10.10.2 are Agency's sole remedies for Developer's failure to perform the Closing Obligation, as defined in Section 10.10.1, (ii) Agency may exercise the Repurchase Option (defined below) only under the conditions set forth in Section 10.12, and (iii) Developer shall not be liable for any consequential or incidental damages.

10.6.2 Developer's Rights. Upon the occurrence of an Agency Event of Default and the expiration of any applicable cure period, Developer shall have the right, in addition to any other rights or remedies provided in this Agreement and subject to any applicable restrictions set forth in this Agreement, to institute an action in accordance with Section 10.15 to seek specific performance of the terms of this Agreement, to cure, correct, prevent or remedy any default, or to recover damages, or to obtain any other remedy available to Developer at law or in equity.

Upon the occurrence of a City Event of Default and the expiration of any applicable cure period, the sole remedy available to Developer against the City shall be specific performance. For purposes of this paragraph only, the successful party in such action shall be entitled to recover from the unsuccessful party all costs, expenses and reasonable attorneys fees incurred by the prevailing party in the enforcement proceeding.

10.7 Remedies Cumulative. Subject to the limitations set forth in Section 10.6, the rights and remedies of the parties under this Agreement shall be cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party will not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default.

10.8 [Intentionally Deleted]

10.9 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights or remedies under this Agreement shall operate as a waiver of any default or of any such right or remedy, nor deprive such Party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies. Without limiting the generality of the foregoing, the failure or delay by either Party in providing a notice of default shall not constitute a waiver of any default.

10.10 Termination of DDA; Disposition of King Property.

10.10.1 Developer Obligation at Horizon Date. By no later than May 29, 2018 (i.e., the ninth (9<sup>th</sup>) anniversary of the Commencement Date of the MOU and hereafter, the “**Horizon Date**”), Developer shall accept the conveyance of the Conveyed Property pursuant to Article IV (the “**Closing Obligation**”); provided, however, that Developer shall not be required to complete the Closing Obligation and shall not be in default of this Agreement if such failure results from the failure of a condition precedent, a Force Majeure Event, or the default on the part of Agency or City of the terms set forth in this Agreement.

10.10.2 Agency Remedies.

(a) If Developer does not perform the Closing Obligation by the Horizon Date, Agency may (but shall not be obligated to) give to Developer a formal written notice of intent to terminate this Agreement (“**Notice of Intent to Terminate**”), and after giving such notice, shall have the right to exercise the remedies set forth in subsection (c) below.

(b) If Agency provides a Notice of Intent to Terminate, Developer shall have one year from the date of delivery of such notice to complete the Closing Obligation; provided, however, that Developer shall not be in default of this Agreement if such failure results from the failure of a condition precedent, a Force Majeure Event, or the default on the part of Agency or City of the terms set forth in this Agreement.

(c) If Developer has not completed the Closing Obligation at the end of the one-year period following delivery of the Notice of Intent to Terminate, Agency may, but shall not be obligated to take both of the following actions (provided, however, that if Agency elects to take the action described in clause (i), it must also take the action described in clause (ii)):

(i) Terminate this Agreement; and

(ii) Purchase for all cash the King Leases and entitlements for the Redevelopment Project at a fixed price of Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the “**King Lease Purchase Price**”); provided, however, the King Lease Purchase Price shall be reduced by the sum of Five Hundred Thousand Dollars (\$500,000) per year for each

year commencing May 29, 2016 (i.e., the seventh (7th) anniversary of the Commencement Date of the MOU) that Developer has failed to complete all of the actions identified in Section 10.10.2(b) up to a maximum reduction of One Million Five Hundred Thousand Dollars (\$1,500,000). If Agency exercises the option set forth in this paragraph, Developer shall convey Developer's interest in the King Leases and the King Lease Property within sixty (60) days following Agency's delivery of notice of its exercise of the option in accordance with the provisions of this paragraph and Sections 4.4 through 4.7 above.

10.11 Effect of Termination. The termination of this Agreement, in part or in whole, shall not affect the rights or obligations of Developer or City under the separate Development Agreement covering the Developer Property.

10.12 Option to Purchase, Enter and Possess. The Agency shall have the additional right at its option, following expiration of the notice and cure period described in Section 10.4, and in accordance with the dispute resolution procedures in Section 10.15, to purchase, enter and take possession of the Conveyed Property with all improvements thereon (the "**Repurchase Option**"), if after Closing, Developer (i) fails to begin construction of the Redevelopment Project within the time specified in Section 6.4 as such date may be extended pursuant to the terms hereof, and after written notice from Agency, (ii) abandons or suspends construction of the Redevelopment Project for a period of one hundred eighty (180) days after written notice from Agency; or (iii) directly or indirectly, voluntarily or involuntarily Transfers the Conveyed Property or this Agreement in violation of Article VIII.

10.12.1 To exercise the Repurchase Option, the Agency shall pay to the Developer cash in an amount equal to:

- (a) The purchase price paid to the Agency by the Developer for the Conveyed Property; plus
- (b) The fair market value of any new improvements constructed by Developer and existing on the Conveyed Property at the time of exercise of the Option; less
- (c) Any gains or income withdrawn or made by the Developer from the applicable portion of the Conveyed Property or the improvements thereon; less
- (d) The value of any liens or encumbrances on the applicable portion of the Conveyed Property which the Agency assumes or takes subject to.

10.12.2 In order to exercise the Repurchase Option, Agency shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Agency with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Agency's receipt of such summary, Agency shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 10.12, and Developer shall execute and deposit into such escrow a grant deed transferring to Agency all of Developer's interest in the Conveyed Property, or portion thereof, as applicable and the improvements located thereon.



10.13 Memorandum of Option to Purchase. The parties shall cause a memorandum or memoranda of the rights granted the Agency in Section 10.12 of this Agreement to be recorded in the Official Records at the time of the Close of Escrow for conveyance of the Conveyed Property to Developer. In lieu of such memorandum, in Agency's discretion, the rights afforded Agency pursuant to Section 10.12 may be described in the Grant Deed. The Agency will not withhold consent to reasonable requests for subordination of the Repurchase Option to deeds of trust provided for the benefit of construction lenders identified in the Financing Plan provided that the instruments effecting such subordination include reasonable protections to the Agency in the event of default, including without limitation, extended notice and cure rights.

10.14 Rights of Mortgagees. Any rights of Agency under this Article X shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments.

10.15 Disputes.

10.15.1 Dispute Resolution. In the event of any dispute arising out of or relating to this Agreement, other than (i) disputes arising out of Developer's Right of First Refusal as provided for in Section 2.5, (ii) those disputes in which the complaining party is seeking to terminate the Agreement, or (iii) disputes brought by Developer, the City or Agency in connection with any obligations that are enforceable only by a court of law (e.g., a writ of mandate), the dispute shall be submitted to binding expedited arbitration pursuant to the procedures set forth in Exhibit 10.15.1. The Arbitrator (as defined in Exhibit 10.15.1) shall dismiss any matter seeking to terminate the Agreement or disputes brought by Developer in connection with any obligations that are enforceable only by a court of law.

**NOTICE: BY SIGNING IN THE SPACE BELOW, DEVELOPER AND AGENCY ARE AGREEING TO HAVE ANY DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION. THE PARTIES ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE DISPUTES LITIGATED IN A COURT OR JURY TRIAL, AND JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF AGENCY OR DEVELOPER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THAT PARTY MAY BE COMPELLED TO ARBITRATE BY LAW. AGENCY'S AND DEVELOPER'S AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. THE PARTIES HAVE READ AND UNDERSTAND THE ABOVE AND AGREE TO SUBMIT TO NEUTRAL ARBITRATION UNDER THIS SECTION. BY SIGNING BELOW, THE PARTIES AGREE THAT THEY SHALL NOT RAISE ANY OBJECTION TO THE ENFORCEMENT OF SUCH ARBITRATION PROVISIONS OF THIS AGREEMENT, BASED UPON ANY PURPORTED LACK OF AUTHORITY TO ENTER INTO SUCH AGREEMENT OR OTHERWISE.**

By Agency:

BARRY M. NAGEL  
Name: [Signature]

By Developer:

[Signature]  
Name: Judd Sklar

Title: CITY MANAGER

Date: 3-23-2011

By City:



Name: Barry Naou

Title: CITY MANAGER

Date: 3-23-2011

Title: Vice President

Date: 3-23-11

10.15.2 Enforcement of Arbitration. The judgment of the arbitrator may be entered and enforced in the Superior Court of San Mateo County, California. Any legal action to compel either Party to submit to binding arbitration, and any other legal action brought pursuant to this Section 10.15, shall be instituted exclusively in the Superior Court of San Mateo County, California.

10.15.3 Litigation. Any legal action brought pursuant to this Section 10.15 shall be instituted exclusively in the Superior Court of San Mateo County, California and both Parties expressly consent to the jurisdiction of such court.

10.15.4 Service of Process. In the event that any legal action is commenced by Developer against Agency, service of process on Agency will be made by personal service upon the Clerk of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on Developer will be made by personal service upon Developer's agent for service of process of Developer at the address listed in Section 11.3 herein or in such other manner as may be provided by law.

## ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

### 11.2 Enforced Delay; Extension of Times of Performance.

11.2.1 Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to the following events (each a "**Force Majeure Event**"): war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight

embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of Agency or City as required in this Agreement), failure by City or any agency or entity with jurisdiction over the Marina Property to approve or issue any entitlements, permits, licenses or approvals required for the construction of any Improvements contemplated herein, or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

11.2.2 Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and Agency (acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency). Agency and Developer acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Redevelopment Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

11.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

11.3.1 personal delivery, in which case notice is effective upon delivery;

11.3.2 certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

11.3.3 nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

11.3.4 facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

If to Agency, to: Community Development Director  
City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080  
Phone: (650) 829-6629  
Fax: (650) 829-6623

With a Copy to: Meyers Nave  
575 Market Street, Suite 2600  
San Francisco, CA 94105  
Attn: Steven T. Mattas, Agency Attorney  
Phone: (415) 421-3711  
Fax: (415) 421-3767

If to Developer, to: SRI Nine Oyster Point LLC  
235 Montgomery Street, 16th Floor  
San Francisco, CA 94104  
Attn: Corporate Secretary  
Phone: (415) 772-7069  
Fax: (415) 772-7148

With Copies to: SRI Nine Oyster Point LLC  
235 Montgomery Street, 16th Floor  
San Francisco, CA 94104  
Attn: Todd Sklar  
Phone: (415) 772-7069  
Fax: (415) 772-7148

Oyster Point Ventures LLC  
601 California Street, Suite 1310  
San Francisco, CA 94108  
Attn: Dan Kingsley  
Phone: (415) 421-8200  
Fax: (415) 421-8201

Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105  
Attn: Zane Gresham  
Phone: (415) 268-7000  
Fax: (415) 260-7522

11.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys'

fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

11.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

11.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VIII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

11.7 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective permitted successors and assigns, any rights or remedies hereunder.

11.8 Survival. All representations made by Developer hereunder and all obligations by either party to indemnify the other Party shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by any grant deed conveying the Conveyed Property to Developer or any successor in interest, and neither such grant deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein.

11.9 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.10 Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Agency Executive Director determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration.

11.11 Entire Agreement. This Agreement, including Exhibits A through Exhibit 10.15.1 attached hereto and incorporated herein by this reference, together with the other Agency

Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

11.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

11.13 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

11.14 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.15 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of Agency or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

11.16 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Conveyed Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

11.17 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

11.18 Cooperation. Prior to Closing, the Parties shall cooperate and do all acts as may be reasonably required or requested by the other in order to revise any legal descriptions attached hereto in order to create insurable legal descriptions that are satisfactory to the Title Company.

**SIGNATURES ON FOLLOWING PAGES.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

**DEVELOPER**

**OYSTER POINT VENTURES LLC,  
a Delaware limited liability company**

By: SRI Nine Oyster Point LLC,  
a Delaware limited liability company,  
its Managing Member

By: [Signature]

Name: Todd Sklar

Its: Vice president

By: SKS Oyster Point, LLC,  
a Delaware limited liability company,  
its Member

By: [Signature]

Name: DANIEL KINGSLY

Its: MEMBER

**AGENCY**

**REDEVELOPMENT AGENCY OF THE  
CITY OF SOUTH SAN FRANCISCO,  
a public body, corporate and politic**

By: [Signature]

Name: BARRY M. NAGEL  
Executive Director

ATTEST:

By: [Signature]  
Agency Secretary

APPROVED AS TO FORM:

By: [Signature]  
Agency General Counsel



**CITY**

**CITY OF SOUTH SAN FRANCISCO,  
a municipal corporation**

By: 

Name: BARRY M. NAGEL  
City Manager

ATTEST:

By:   
City Clerk

APPROVED AS TO FORM:

By:   
City Attorney

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