

AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

PLAZA AT ALMADEN OFFICE COMPLEX

By and Between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF
SAN JOSE,

Successor Agency,

and

BXP ALMADEN ASSOCIATES LP,

a Delaware Limited Partnership

Developer

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AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into this ____ day of _____ 2021, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, a public entity established pursuant to California Health and Safety Code Section 34177 ("Successor Agency"), successor in interest to the Redevelopment Agency of the Successor Agency of San Jose, a public agency ("Agency"), and BXP ALMADEN ASSOCIATES LP, a Delaware Limited Partnership ("Developer"), successor in interest to Boston Properties Limited Partnership, a Delaware limited partnership ("Predecessor"), whose managing and sole General Partner is Boston Properties, Inc., a Delaware corporation ("Original Developer"). For purposes of this Agreement, the "execution date" is the date that the Successor Agency Board and Successor Agency jointly approve this Agreement by official action. The Successor Agency and the Developer covenant and agree as follows:

I. [§ 100] SUBJECT OF AGREEMENT.

A. [§ 101] Purpose of the Agreement.

The Agency and Original Developer entered into that certain Disposition and Development Agreement dated June 29, 2000, and as amended on December 18, 2001, December 12, 2003, December 5, 2006, and May 13, 2008 (collectively, "Original DDA"). The Agency and Predecessor subsequently amended and restated in its entirety the Original DDA by that certain Amended and Restated Disposition and Development Agreement dated June 8th, 2010 (collectively, the "Interim DDA"). The Successor Agency and Developer now desire to amend and restate in its entirety the Interim DDA to revise the Project to be developed in accordance with the entitlements that are currently in process for approval for the Project. From and after the date of this Agreement, the Interim DDA shall be superseded and replaced in its entirety by this Agreement and this Agreement shall control with respect to the development of the Project.

The purpose of the Original and Interim Agreements was to effectuate the Redevelopment Plan for the Guadalupe-Auzerais Project Area, by providing for the disposition and development by public and private action of the Site (defined below). Certain parcels previously owned by the Agency (the "Successor Agency Parcels") were sold to Developer on June 22, 2010 and Developer acknowledges and agrees that this Agreement shall continue to govern development of the Project. The Project (defined below), and the fulfillment generally of this Agreement, are in the vital and best interest of the Successor Agency and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements under which the Project is being undertaken.

This Agreement is designed to achieve the development of the Site by the Successor Agency and the Developer in a coordinated and comprehensive manner. The Developer will undertake the development, ownership, operation and maintenance of the improvements on the Site.

The economic provisions contained in this Agreement have been negotiated and approved based upon, among other things, the Developer's undertaking to provide the capital funds necessary to develop the Project on the Site and to accomplish the specific development obligations set forth in this Agreement (including all of its Attachments) within the times and in the manner and for the uses set forth in this Agreement.

B. [§ 102] The Site.

The "Site" is that certain real property which is shown on the "Site Map" which is attached to this Agreement as Attachment No. 1, and is legally described in Attachment No. 2 attached hereto, which attachments are incorporated herein by this reference. For historical purposes, the "Successor Agency Parcels" are identified on the Site Map and are legally described in the June 22, 2010 Grant Deed (Attachment No. 3) which is incorporated herein by this reference.

C. [§ 103] The Project.

Developer shall develop and construct a "Project" consisting of a commercial development with two towers over a multi-story podium that shall include parking, plaza, landscaping and related uses, all as more fully described in the "Scope of Development," Attachment No. 4 which is incorporated herein by this reference. Development of the Project shall be done in accordance with this Agreement, including the "Schedule of Performance", Attachment No. 5 which is incorporated herein by this reference. The parties acknowledge that the approximate scope, size and other aspects of the proposed Project shall be determined only after Developer has complied with the appropriate governmental requirements and obtained the appropriate governmental approvals, including a building permit, for the proposed project. Subject to the terms and provisions of this Agreement, Developer shall commence construction of the Project as stated in the Schedule of Performance and shall thereafter diligently prosecute construction of the Project to completion.

D. [§ 104] Project Area.

The "Project Area" means the Guadalupe-Auzerais Redevelopment Plan Area located in the City, the exact boundaries of which are described in the Redevelopment Plan which is on file with the Successor Agency.

E. [§ 105] Redevelopment Plan.

The "Redevelopment Plan" means the Guadalupe-Auzerais Redevelopment Plan, which is on file with the Successor Agency.

F. [§ 106] Parties to the Agreement.

1. [§ 107] The Successor Agency.

The Successor Agency is a public entity established pursuant to California Health and Safety Code Section 34177. The principal office of the Successor Agency is located at 200 East Santa Clara Street, San Jose, California, 95113. "Successor Agency" as used in this Agreement includes the Successor Agency to the Redevelopment Agency of the City of San Jose and any assignee of or successor to its rights, powers and responsibilities.

2. [§ 108] The Developer.

The Developer warrants and represents the following to be true and correct:

The Developer is BXP Almaden Associates LP, a Delaware limited partnership and wholly owned subsidiary of Boston Properties Limited Partnership, a Delaware limited partnership, whose managing and sole General Partner is Boston Properties, Inc., a Delaware corporation. The Developer, Predecessor and Original Developer are all qualified to do business in California. The principal office of the Developer is Four Embarcadero Center, Lobby Level, Suite One, San Francisco, California 94111-5994.

3. [§ 109A] Restrictions on Change of Ownership and Control of Developer.

The Developer acknowledges and agrees that its undertakings pursuant to this Agreement are for the purpose of timely development of the Site as the Project and not for speculation in landholding. The Developer further recognizes that, in view of:

(a) The importance of the development of the Site to the general welfare of the community; and

(b) The reliance by the Successor Agency upon the real estate and construction expertise of the Developer to assure the quality of the development of the Project and the use, operation and maintenance thereof is deemed critical by the Successor Agency; and

(c) The fact that a change in ownership or control of the Developer, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership, other than outlined herein or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Site; and

(d) Intentionally Deleted; and

(e) The importance to the Successor Agency and the community of the standards for the development and the use and operation and maintenance of the Site; that the qualifications and identity of the Developer are of particular concern to the community and the Successor Agency. The Developer further recognizes that it is because of such qualifications and identity that the Successor Agency entered into the Original Agreement and the Interim Agreement and the Successor Agency is entering into this Agreement with the Developer. No voluntary or involuntary successor-in-interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

In light of the foregoing, and except as otherwise provided in Sections 109B and 109C, the Developer, without the prior written approval of the Successor Agency, which approval shall be within the sole discretion of the Successor Agency, shall not (i) assign or delegate all or any part of its rights and obligations under this Agreement; or (ii) effect any transaction which would in any way change the ownership, management, or control of Developer (a "Transfer") prior to recording Certificates of Compliance for the Project as provided in Section 320 (such Transfer requiring Successor Agency consent to be known as a "Prohibited Transfer").

This Agreement may be terminated by the Successor Agency pursuant to Section 605B if there is any voluntary or involuntary assignment or Prohibited Transfer.

4. [§109B] Procedure for Seeking Successor Agency Approval of Prohibited Transfers

Prior to recording Certificates of Compliance for the Project as provided in Section 320, Developer may request in writing the prior approval of the Successor Agency for a Transfer. Successor Agency shall respond in writing approving, disapproving or reasonably requesting additional information within fifteen (15) business days after Developer delivers written notice thereof. Failure by Successor Agency to respond in writing to a written Transfer request within such 15-day period shall be deemed Successor Agency's approval of such Transfer; provided however that in the event the Successor Agency requests additional information with said 15-day period, the 15-day period for deemed approval shall commence with the date the Successor Agency receives all requested information.

In the event of a disapproval, Successor Agency shall provide reasons for such disapproval. Grounds for disapproval shall be limited to the Successor Agency's determination that all of the following conditions are not satisfied to its reasonable satisfaction:

(a) The proposed Transferee demonstrates that it has the reputation and prior experience in completing projects of a type, scale and quality similar to the Project and that it has an established record of maintaining fair employment practices and good employee relationships;

(b) The proposed Transferee demonstrates that it has the financial capability to complete the Project as required by this Agreement;

(c) The proposed Transferee demonstrates that it has the proven ability to manage and operate the completed Project;

(d) The proposed Transferee agrees in writing to assume the rights and obligations as to the whole or any part of the Project or the Site to be transferred to it by Developer and to perform all covenants, conditions and provisions of this Agreement which are applicable to such portion of the Project or Site.

5. [§109C] Permitted Transfers.

Notwithstanding Section 109A, Developer shall not be required to seek the approval of the Successor Agency in connection with any of the following Transfers, each of which shall be individually or collectively referred to as a "Permitted Transfer." Developer shall be required to provide Successor Agency written notice of the Permitted Transfers identified in paragraphs (b) and (d) only within thirty (30) days of the Permitted Transfer.

(a) Any transfer of any limited partnership interest in the Developer hereunder, as long as the same does not effect a change in the management or control of Developer.

(b) Any transfer in connection with the transfer of all or any rights of Developer hereunder to (i) Boston Properties, Inc., a Delaware corporation ("BXP"), an entity which controls Developer; (ii) an affiliate (which is herein defined as an entity which is controlled by, controls or is under common control, as such term is defined in California General Corporations Code ("CGCC") Sections 160 and 5045) of BXP or the Developer; (iii) an entity which merges with or acquires or is acquired by Developer or BXP as defined in CGCC Sections 175 and 5064; or (iv) a transferee of substantially all of the assets, stock or operating units of Developer or BXP.

(c) The sale or lease of any portion of the Project in connection with the development of the Site for one or more users, including without limitation a build to suit transaction or a synthetic lease transaction.

(d) A mortgage, deed of trust, sale and lease-back or any other form of conveyance required for any reasonable method of financing for the purpose of securing funds to be used for the financing the acquisition or construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site under this Agreement as long as such entity qualifies as a "Permitted Mortgagee" pursuant to Article IV of this Agreement.

(e) The conveyance or dedication of any portion of the Site to the Successor Agency of San Jose or other appropriate government agency, or the granting of easement or permits to facilitate construction or operation of the Project.

(f) The leasing or pre-leasing of office or retail/amenity space within any improvements on the Site for possession by tenants or users.

(g) Any transfer of all or any portion of the Project for which a Certificate of Compliance has been recorded.

6. [§109D] Assumption of Obligations in the Event of a Permitted Transfer or a Prohibited Transfer which Receives Successor Agency Approval.

Any Permitted Transfer of Developer's interest in the Project or this Agreement or other transfer of Developer's interest in the Project which is approved by the Successor Agency, in each instance (a) shall operate as an assumption by the Permitted Transferee or approved Transferee of all obligations and liabilities of the Developer under this agreement and (b) shall operate to relieve the Developer from any and all obligations or liabilities under this Agreement for the period commencing with the date of the Permitted Transfer or approved Transfer. Any Prohibited Transfer shall not relieve the Developer or any other party from any obligations under this Agreement.

G. [§ 110] Memorandum of DDA.

Concurrently with execution of this Agreement, the parties shall execute and record a Memorandum of Amended and Restated DDA ("Memorandum") in the form attached hereto as Attachment No. 6, which shall provide notice of its conditions, covenants and restrictions which shall run with the Site and shall be binding on Developer, its successors and assigns and which shall release of record the Memorandum of DDA recorded pursuant to the Interim DDA.

H. [§ 111] Material Obligations.

1. For purposes of this Agreement, the phrase "Developer's Material Obligations" shall mean the Developer's obligation to perform the following acts, when and as required by this Agreement, including all attachments hereto:

- (a) Intentionally deleted;
- (b) prepare, complete and submit to the Successor Agency, documents and drawings for its approval in accordance with the requirements set forth in the Scope of Development;
- (c) diligently pursue all land use and other government approvals and permits required for the Project in the manner specified in Section 202B and 312;
- (d) engage in development activities for the Project within the times specified in the Schedule of Performance;
- (e) operate and maintain the Project in all material respects in accordance with this Agreement and all attachments hereto; and
- (f) perform all of Developer's indemnity obligations to Successor Agency and Successor Agency under this Agreement, including, but not limited to, those set forth in Sections 303C, 311 and 313.

2. Intentionally Deleted.

3. It is expressly understood and acknowledged by the parties hereto that any obligation of the Developer or the Successor Agency referred to in this Agreement shall be subject to the satisfaction of any expressed conditions precedent to such performance which may be set forth in this Agreement.

II. [§ 200] INTENTIONALLY DELETED

III. [§ 300] DEVELOPMENT OF SITE

A. [§ 301] Scope of Development.

The Site shall be developed as the Project (described in Section 103) in accordance and within the limitations established in this Agreement, the Scope of Development and any other governmental requirements. For purposes of this Agreement, the terms "construct," "develop," "construction" or "development" shall mean and refer to the development of the Project on the Site as provided herein.

B. [§ 302] Hazardous Materials.

1. [§ 302A] Intentionally deleted.

2. [§ 302B] Hazardous Materials Definition.

For purposes of this Agreement, the term “Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products or waste may give rise to liability under any environmental law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products or wastes.

“Environmental Laws” shall mean and include all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards or conduct or performance relating to industrial hygiene, occupational health and/or safety conditions, environmental conditions, or exposure to, contamination by or clean-up, licensing, use, generation, manufacture, storage, discharge, disposal or transportation of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental statutes.

3. [§ 303C] Hazardous Materials Indemnity.

Developer shall protect, indemnify, defend, and hold harmless the Successor Agency and the City and any officer, employee, agent, contractor, successor or permitted assign of either for an unlimited period, from and against any claim, liability, injury, damage (excluding consequential damages), fees, actual out-of-pocket costs or expenses (including without limitation, reasonable attorneys' fees, court costs, and the cost of any cleanup, testing, remediation or removal of Hazardous Materials) relating to or arising out of any and all actual or alleged Hazardous Materials in, on, under or about the Site or any development or use of the Site subsequent to conveyance of the Agency Parcels to Developer except to the extent the condition was caused, arose or resulted from the Successor Agency or City's own negligence or willful misconduct or that of its respective officers, employees, contractors, agents, successors or assigns. These indemnity obligations shall survive the expiration or termination of this Agreement;

provided, however, that if the Successor Agency exercises its right to repurchase pursuant to this Agreement, Developer's indemnity obligation shall be limited to the period of time that Developer owned the Successor Agency Parcels.

D. [§ 304] Intentionally Deleted.

E. [§ 305] Cost of Construction.

The cost of developing the Site and constructing all improvements thereon shall be borne by the Developer. The Successor Agency and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

F. [§ 306] Construction Schedule.

The Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Project. The Developer shall begin and diligently work to complete all construction and development within the times specified in the Schedule of Performance or such reasonable extensions as may be granted by the Successor Agency or as provided in Section 604. The construction schedule is subject to revision from time-to-time as mutually agreed upon in writing between the Developer and the Successor Agency, each party agreeing to extend such schedule as is reasonably required based on the course of construction. Developer and Successor Agency acknowledge that due to the size of the Project, it will be extremely difficult to commence construction without a substantial portion of the Project being pre-leased to a user and as such, the Successor Agency agrees that it will not unreasonably withhold its consent in granting construction commencement extensions so long as Developer uses commercially reasonable efforts to market and lease the Project to prospective users. For the avoidance of doubt, any extensions granted in accordance with to this Section 306 may be granted pursuant to Section 803 below.

During the period of construction, but not more frequently than once a quarter, the Developer shall submit to the Successor Agency a written progress report of the construction when and as requested by the Successor Agency. The report shall be in such form and detail as may reasonably be required by the Successor Agency and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

G. [§ 307] Bodily Injury, Property Damage and Workers' Compensation Insurance.

Without limiting the force and effect of any other indemnity provisions in this Agreement, to the fullest extent permitted by law, Developer agrees to, and shall, indemnify, protect, defend and hold the Successor Agency and the City and their

officers, employees, agents, successors and permitted assigns harmless from and against any and all claims, proceedings, liabilities, losses, damages, fees, costs, and expenses (including court costs) arising after the conveyance of the Agency Parcels from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person (other than the Site itself) (i) which shall occur on the Site, or (ii) which shall occur adjacent to the Site which arises out of the construction, development, management and/or operation of the Project, or (iii) which in any way arises out of the construction, development, management and/or operation of the Project, including, but not limited to, claims of negligent or defective design or construction, regardless of whether any such liability occurs before or after the Successor Agency issues the Certificate of Compliance; notwithstanding the foregoing, Developer's obligations to indemnify and hold harmless exclude only such claim, loss or liability to the extent it is due to the negligence or willful misconduct of the Successor Agency and/or their officers, employees, agents, successors or assigns. These indemnity obligations shall survive the termination of this Agreement.

Developer shall have and maintain the insurance policies set forth in the Insurance Requirements, Attachment No. 12, which is incorporated herein by this reference. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the Successor Agency.

Prior to the commencement of construction on the Site or any portion thereof, the Developer shall furnish or cause to be furnished to the Successor Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies as set forth in the Insurance Requirements and all such insurance or bond shall name Successor Agency as additional insureds. The Developer shall also furnish or cause to be furnished to the Successor Agency evidence satisfactory to the Successor Agency that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law.

H. [§ 308] City and Other Governmental Permits.

Before commencement of construction or other work of improvement upon the Site, the Developer shall, at its own expense, use all reasonable commercial efforts to secure or cause to be secured any and all Successor Agency, City and other governmental maps, plans, permits, zone approvals, or other forms of approval, entitlement, permission, or concurrence, whether discretionary, ministerial or otherwise, incident to, or necessary for, the development of the Project which may be required by the Successor Agency, the City or any other governmental agency affected by such construction or work (collectively referred to the "Permits"). Some of those Permits may be granted subject to "Conditions of Permits," which Conditions of Permits shall be considered included in the foregoing reference to Permits. Regarding any such Permits, Developer shall retain its legal and equitable rights (at the administrative and judicial levels) to appeal, protest and litigate such Permits which Developer believes to be contrary to controlling law. Successor Agency shall assist Developer with the processing of all land use and other government approvals and permits required for the

Project through the City of San Jose's Department of Planning, Building and Code Enforcement.

I. [§ 309] Rights of Access.

For the purposes of assuring compliance with this Agreement, representatives of the Successor Agency and the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes set forth in this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Project. Such representatives of the Successor Agency or the City shall be those who are so identified in writing by the Executive Officer of the Successor Agency. The Successor Agency or City, as applicable, shall indemnify, save and defend the Developer and hold it harmless from any loss, claim, or damage (excluding consequential damages) caused or liability arising out of this right to access or any physical damage resulting from any inspection except to the extent the loss, claim or damage is caused by the negligence or willful misconduct of Developer, or its members, partners, shareholders, officers, employees, contractors or agents.

J. [§ 310] Local, State and Federal Laws.

The Developer shall carry out the construction of the Project in conformity with all applicable laws, including all applicable federal and state labor standards.

The Developer shall be responsible for posting on the Site any signs required by any state, federal or local law, including, without limitation, Section 25249.6 of the California Health and Safety Code and regulations similar to or promulgated pursuant thereto. The Developer shall also complete and file any business response plans or inventories required by any state, federal or local law, including, without limitation, Chapter 6.95 of the California Health and Safety Code and regulations promulgated pursuant thereto. The Developer shall concurrently file a copy of any such business response plan or inventory with the Successor Agency.

K. [§ 311] Antidiscrimination.

1. [§ 311A] Nondiscrimination Covenant.

The Developer, for itself and its successors and assigns agrees that in the construction of the improvements on the Agency Parcels provided for in this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, color, age,

religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Successor Agency setting forth the provisions of this nondiscrimination clause.

(b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin.

(c) The Developer will cause the foregoing provisions to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor and subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

2. [§ 311B] Form of Nondiscrimination and Nonsegregation Clauses.

The Developer shall refrain from restricting the rental, sale or lease of the Successor Agency Parcels on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1 In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, 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, or on the basis of actual or perceived gender identity, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, 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 land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following

conditions:

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, or on the basis of actual or perceived gender identity, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, 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 land herein leased."

3. In contracts: "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, or on the basis of actual or perceived gender identity, in the contracting, subcontracting, transferring, or assignment of the work hereby contracted for nor shall the contractor himself or herself, or any persons claiming under or through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, number, employment or work of contractors, subcontractors, transferees or assignees in the work which is the subject of the contract."

L. [§ 312] Prevailing Wages.

Developer shall pay, or cause to be paid, prevailing wages, for all construction work required under this Agreement. For the purposes of this Agreement, "prevailing wages" means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulations (Section 16000 et seq.), and as established by the Director of the California Department of Industrial Relations ("DIR"), or in the absence of such establishment by the DIR, by the City's Office of Equality Assurance ("OEA"), for the respective craft classification. In any case where the prevailing wage is established by the DIR or by OEA, the general prevailing rate of per diem wages shall be adjusted annually in accordance with the established rate in effect as of such date.

In addition to State Law requirements regarding prevailing wages, the Successor Agency recognizes that Developer's payment of prevailing wages promotes the following goals:

1. Protection of job opportunities within the City of San Jose and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas;

2. Benefiting the public through the superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace;

3. Payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of San Jose by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer funded social services; and

4. Increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

Developer's compliance with prevailing wage requirements is a material consideration of Successor Agency in entering into this Agreement. Successor Agency will monitor Developer's compliance with the Labor Code requirements and additional requirements of this Agreement through the Successor Agency of San Jose's Office of Equality Assurance (OEA).

Developer shall:

- **Require its construction contractor and subcontractors to complete and submit all prevailing wage initial compliance documentation to OEA.**
- **Following commencement of construction, require its contractor and subcontractors to submit completed certified payroll records with each monthly pay request and Developer shall refuse to pay all or a portion of a pay request to the extent not supported by certified payroll documentation.**
- **Submit all certified payroll to Successor Agency on a monthly basis in arrears within fifteen days of Developer's receipt ("Payroll Due Date").**
- **Require the contractor for the construction of the Project to grant the Successor Agency access to the Sites at reasonable times for the purpose of enforcing the provisions of this Section.**
- **Provide the Successor Agency and Successor Agency with documentation relating to compliance with this Section.**

- **Indemnify and hold the City and Successor Agency harmless from any third party costs, claims, or damages arising from the contractor's or any subcontractor's failure to pay prevailing wages.**

Successor Agency and Developer recognize that Developer's breach of applicable prevailing wage provisions, including those applicable through the California Labor Code and City's additional prevailing wage compliance provisions within this Agreement, will cause the Successor Agency damage by undermining Successor Agency's goals in assuring timely payment of prevailing wages, and will cause the Successor Agency additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by Developer's payment of restitution to the worker paid less than the prevailing wage. Successor Agency and Developer further recognize the delays, expense and difficulty involved in proving Successor Agency's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, Successor Agency and Developer agree that:

(a) for each day beyond the Payroll Due Date that Developer fails to submit contractor's certified payroll to Successor Agency, Developer shall pay to Successor Agency as liquidated damages the sum of ONE HUNDRED DOLLARS (\$100.00); and

(b) for each instance where Successor Agency has determined that prevailing wage requirements were not met, Developer shall pay to Successor Agency as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.

SUCCESSOR AGENCY

DEVELOPER

M. [§ 313] Construction and Pedestrian Barricade Signs.

The Developer, at its sole cost, shall provide and install construction site and pedestrian barricade signs that identify the Project and give recognition to the Successor Agency as prescribed by the Successor Agency, which signs shall fully comply with all applicable sign ordinances of the City and shall conform to all rules and regulations of the City Department of Public Works and Department of Transportation. Prior to design and installation, Developer shall submit to the Successor Agency for its review and approval plans, setting forth the location, size, design, color scheme and written text of the signs. The signs must be installed on the Site no later than fifteen (15) days prior to commencement of construction on the Site and shall remain installed until issuance of the Certificate of Compliance for the Project.

N. [§ 314] Responsibilities of the Successor Agency.

The Successor Agency, without expense to the Developer or assessment

or claim against the Site, shall perform all work specified herein and in the Scope of Development for the Successor Agency to perform within the times specified in the Schedule of Performance.

O. [§ 315] Prohibition Against Transfer of Site, the Buildings or Structures Thereon and Assignment of Agreement.

Except as expressly permitted by this Agreement, including without limitation Sections 109A, 109B and 109C, prior to the recordation of a Certificate of Compliance for the Project, the Developer shall not sell, transfer, convey, assign or lease the whole or any part of the Project or the Site without the prior written approval of the Successor Agency, which approval shall be at the sole discretion of the Successor Agency. This prohibition shall not be deemed to prohibit or restrict the lease of office or retail/amenity space.

Any Permitted Transfer of Developer's interest in the Property or other transfer of Developer's interest in the Property which is approved by the Successor Agency, in each instance, (a) shall operate as an assumption by the Permitted Transferee of all obligations and liabilities of the Permitted Transferor under this Agreement and (b) shall operate to relieve the Permitted Transferor only from its obligation or liability under this Agreement for the period commencing with the date of the Permitted Transfer. Any other transfer or assignment prior to the recordation of a Certificate of Compliance for the Project shall not relieve the Developer or any other party from any obligations under this Agreement related to the Project.

P. [§ 316] Certificate of Compliance.

Upon (i) the completion of the Project as required by this Agreement, including, without limitation, the Scope of Development and, (ii) the issuance of a final unconditional certificate of occupancy for the Project by the City, (iii) Developer certifying its compliance with the terms of this Agreement, and (iv) Developer providing certifications from all contractors and subcontractors that each of them complied with prevailing wage requirements relating to the Project, the Successor Agency shall furnish Developer with the Certificate of Compliance for the Project, in the form as attached to this Agreement as Attachment No. 13 (the "Certificate of Compliance") upon the written request therefor by Developer.

The Successor Agency shall not unreasonably withhold the Certificate of Compliance. The Certificate of Compliance shall be in such form as to permit it to be recorded in the Recorder's Office of Santa Clara County. Issuance by the Successor Agency of the Certificate of Compliance shall constitute confirmation that Developer has completed the development of the Project and has complied with all of Developer's obligations, and other covenants under this Agreement, which relate to the design and construction of the Project. Issuance of the Certificate of Compliance shall not constitute evidence that Developer has satisfied any of its other covenants under this Agreement.

If the Successor Agency refuses or fails to furnish the Certificate of Compliance after written request from Developer, the Successor Agency shall, within thirty (30) days following receipt of the written request, provide Developer with a written statement of the reasons the Successor Agency refused or failed to furnish the Certificate of Compliance which reasons must be consistent with the terms of this Agreement.

The Certificate of Compliance is not a notice of completion as referred to in Section 3093 of the California Civil Code.

Q. [§ 317] Uses.

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that, during construction and thereafter, the Developer, its successors and assignees shall devote the Site to the uses specified in Section 103. The foregoing covenant shall run with the land.

R. [§ 318] Declaration of Covenants and Restrictions Affecting Real Property.

The parties hereto shall execute and record the Declaration of Covenants and Restrictions Affecting Real Property at Close of Escrow. The Declaration shall provide, among other things, for (a) public access to parking on the Site during evening and weekends subject to the prevailing rate charged from time to time at the location of such parking facilities, (b) public access to the Guadalupe River.

S. [§ 319] Public Art

As set forth in the Scope of Development, Developer shall include public art on or near the Site (provided that any location near the Site will need to be (i) within downtown San Jose, and (ii) approved by the City), the cost of which public art shall be not less than an amount equal to one percent (1%) of the total costs (including hard costs and soft costs, but excluding land acquisition costs) incurred in connection with the development of the Project; provided that in no event shall Developer be required to incur costs for the public art in excess of one percent (1%) of the total costs incurred in connection with the development of the Project (the "Public Art Requirement").

A. If the Public Art Requirement is fulfilled on the Site:

1. Artwork shall be substantially complete upon physical occupancy of the first tenant in the Project, pursuant to San Jose Municipal Code Section 22.08.020.

2. Location, artist selection and materials shall be at the sole discretion of Developer as outlined in this Agreement.
3. Developer agrees to provide documentation of costs fulfilling the Public Art Requirement.

B. If the Public Art Requirement is not fulfilled on the Site:

1. Developer shall inform City of its desire to fulfill the Public Art Requirement, in part or in whole, on public property within 24 months of going vertical with the building structure.
2. To the extent not located on the Site, the balance of the Public Art Requirement will be fulfilled on public property in the Downtown Growth Area as defined in the General Plan 2040.
3. The determination of the location of public artwork not located on the Site will be at the discretion of the City. City agrees to receive input from the Developer as to sites that should be considered.
4. Developer agrees to compensate City for public art staff time administering any artwork projects on public property to fulfill the Public Art Requirement. Developer will provide compensation to the City equal to a minimum of 15% and a maximum of 30% of the amount of the Public Art Requirement being installed on public property (the "Installment") in advance of CITY incurring any costs hereunder so that CITY may draw against such Installment in its performance under this or any future agreement to administer any privately funded public art project on CITY property in fulfillment of the Public Art Requirement. The Installment paid to the City shall be in partial satisfaction of the Public Art Requirement, and not in addition to the Public Art Requirement. If any portion of the Installment paid by Developer remains unspent by CITY at the expiration or termination of this AGREEMENT, or following the installation of the artwork ("Remaining Installment"), CITY must return the Remaining Installment to Developer within 120 days after the earlier of (i) the expiration or termination of this AGREEMENT, whichever is applicable, and (ii) the installation of the artwork.
5. Developer agrees to pay for all costs associated with design, engineering, fabrication, delivery, installation, and any ongoing maintenance, repairs, or conservation of the Artwork, except to the extent such ongoing maintenance, repair or conservation costs are covered by the compensation provided to the City pursuant to B4 above.

Developer has the ability to install multiple pieces of artwork onsite, offsite, or a combination thereof so long as the total cost of the artwork complies with the 1%

requirement. Any Artwork installed offsite will be subject to the process and costs outlined in B1 - B5 above.

T. [§ 320] Effect and Duration of Covenants.

Except as otherwise provided, the covenants contained in this Agreement and the Declaration of Covenants and Restrictions Affecting Real Property previously recorded against the Project ("CC&R") shall remain in effect for sixty (60) years commencing on the date the CC&RS are recorded against the Property. The covenants against discrimination shall remain in effect in perpetuity. The covenants established in this Agreement and the CC&Rs shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Successor Agency, its successors and assigns, and the City.

The Successor Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the Successor Agency without regard to whether the Successor Agency has been, remains or is an owner of any land or interest therein in the Site, any parcel or subparcel, or in the Project Area. The Successor Agency shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

U. [§ 321] Sale of the Project.

Subject to the terms of Sections 109A, 109B and 109C of this Agreement, the Developer shall not under any circumstances be entitled to sell any portion of its ownership interest in the Project prior to the completion of the Project, without the prior written consent of the Successor Agency, which may be granted or withheld in the sole discretion of Successor Agency.

IV. [§ 400] FINANCING OF THE SITE.

A. [§ 401] Method of Financing.

The Project is intended to cost and to be financed as provided on Method of Financing, which is Attachment 9 and incorporated herein by this reference.

B. [§ 402] Developer's Capital and Project Commitments.

1. [§ 402A] Developer's Equity.

Developer's equity shall be a cash contribution and shall be used to fund Project Costs as more fully set forth on the Method of Financing. Developer's equity shall be in an amount and disbursed as set out in the Method of Financing.

2. [§ 402B] Developer's Financing.

Developer shall use all commercially reasonable efforts to obtain a construction loan from a lender or to otherwise provide equity funding in lieu thereof to fund Project Costs for the Project in an amount as set forth in the Method of Financing. Evidence of funding commitments which conform to the terms of this Agreement shall be executed and delivered as set forth in the Schedule of Performance and shall include, but is not limited to: confirmation (by Developer's Board or as otherwise may be reasonably acceptable to Successor Agency) of availability and sources of all necessary equity funds, as and when required, to meet the expected Project Costs for the Project; an unconditional, firm and enforceable commitment by a recognized institutional lender for the construction loan necessary to meet the expected Project Costs for the Project (which commitment shall be deemed present if such lender provides evidence satisfactory to the Successor Agency that it is in a position to record an appropriate deed of trust on the Site); a plan for any further financing; and any additional evidence of financing submittals as may reasonably be required by Successor Agency. Successor Agency approval or disapproval of the overall evidence of financing is within the reasonable discretion of the Successor Agency Executive Officer

C. [§ 403] Security Financing; Rights of Holders.

1. [§ 403A] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development.

Mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing (herein "Permitted Encumbrance") are permitted in accordance with the requirements of Section 109C if Developer has provided the Successor Agency written notice of such Permitted Mortgagee, but only for the purpose of securing funds to be used for financing the acquisition or construction of improvements on the Site and any other expenditures necessary and appropriate to develop the Site under this Agreement. (The holder of a Permitted Encumbrance shall sometimes be referred to herein as a "Permitted Mortgagee".) The restrictions described in this Section 403 shall apply to the Project until the Project has been issued a Certificate of Compliance.

All financing documents shall provide that any insurance proceeds from fire and all-risk or other insurance shall be used for the full reconstruction and restoration of the Site before repaying any part of the outstanding indebtedness secured by a security financing interest; provided, however, that if after using reasonable commercial efforts, the Developer is unable to obtain financing with the foregoing provision, then in that event, the Successor Agency hereby approves an alternative provision which would allow that insurance proceeds from fire and all-risk or other insurance shall first be used to make the Site safe by razing any remaining improvements, clearing the Site or otherwise making it safe as required by law before any insurance proceeds repay any part of the outstanding indebtedness secured by a security financing interest.

2. [§ 403B] Permitted Mortgagee Not Obligated to Construct Improvements.

No Permitted Mortgagee shall be obligated by the provisions of this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; nor shall this Agreement be deemed to construe, permit or authorize any such Permitted Mortgagee to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

3. [§ 403C] Notice of Default to Permitted Mortgagees; Right to Cure.

Whenever the Successor Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer, the Successor Agency shall at the same time deliver a copy of such notice or demand to each Permitted Mortgagee who has previously made a written request to the Successor Agency therefor. Each such Permitted Mortgagee shall (insofar as the rights of the Successor Agency are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. If such default shall be a default which can only be remedied or cured by such Permitted Mortgagee upon obtaining possession of the Site or any portion thereof and such Permitted Mortgagee promptly commences and diligently prosecutes efforts to obtain possession through a receiver or otherwise, such Permitted Mortgagee shall have until ninety (90) days after obtaining possession to cure such default. Notwithstanding anything to the contrary contained herein, in the case of a default which cannot with diligence be remedied or cured within ninety (90) days, such Permitted Mortgagee shall notify the Successor Agency in writing of its intentions to cure the default with an anticipated timeline for completion and thereafter shall have such additional time as the Successor Agency and the Permitted Mortgagee agree is reasonably necessary to remedy or cure such default with diligence but in no event longer than two (2) years after receipt of notice hereunder; provided, further, such Permitted Mortgagee shall not be required to remedy or cure any non-curable default of

Developer (such as an unauthorized attempted assignment or the failure to meet a deadline). Nothing contained in this Agreement shall be deemed to permit or authorize such Permitted Mortgagee to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Successor Agency by written agreement satisfactory to the Successor Agency. The Permitted Mortgagee in that event shall only be liable or bound by Developer's obligations hereunder during the period that the Permitted Mortgagee is in possession of such portion of the Site in which the Permitted Mortgagee has an interest and, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest in such property and the improvements owned by it thereon. In addition, the Permitted Mortgagee in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such Permitted Mortgagee relates. Any such Permitted Mortgagee properly completing such improvements shall be entitled, upon written request made to the Successor Agency, to a Certificate of Compliance from the Successor Agency with respect to such improvements. It is understood that Permitted Mortgagee shall be deemed to have satisfied the ninety (90) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such Permitted Mortgagee has within such ninety (90) day period commenced proceedings to obtain title and/or possession and thereafter the Permitted Mortgagee diligently pursues such proceedings to completion and cures or remedies the default within two (2) years of receipt of notice hereunder. All rights and obligations of a Permitted Mortgagee pursuant to this Agreement shall also accrue to any purchaser, assignee or successor of a Permitted Mortgagee upon acquisition of title to any portion of the Site by such purchaser, assignee or successor pursuant to a judicial or nonjudicial foreclosure or a deed in lieu of foreclosure, or pursuant to a conveyance from a Permitted Mortgagee by deed, subsequent to such Permitted Mortgagee's obtaining title. In the event of such conveyance to a purchaser, assignee or successor, then the Successor Agency agrees that it shall not unreasonably withhold, condition or delay its approval of further extensions of time for performance of the Developer's obligations under this Agreement as appropriate but in no event for a period of time longer than two (2) years after receipt of notice hereunder to permit such purchaser, assignee or successor to obtain possession of the Site and enter into contracts for the construction of improvements to complete the development of the Project.

Breach of any of the covenants, conditions, restrictions or reservations contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Site or any interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the Permitted Mortgagee and any owner of the Site or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

No modification or amendment of this Agreement affecting the rights of a Permitted Mortgagee shall be binding upon any Permitted Mortgagee holding a mortgage or deed of trust from and after the date of recordation of such mortgage or deed of trust unless and until the written consent of such Permitted Mortgagee is obtained.

4. [§ 403D] Failure of Permitted Mortgagee to Complete Improvements.

In any case where, ninety (90) days after default by the Developer in completing the construction of improvements under this Agreement, the Permitted Mortgagee has not exercised the option afforded in Section 319 of this Agreement to construct, or if it has exercised the option but has not proceeded diligently with construction, the Successor Agency may, but shall have no obligation to, purchase the security financing interest by payment to the Permitted Mortgagee of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of such portion has vested in the Permitted Mortgagee, the Successor Agency, if it so desires, shall be entitled to a conveyance from the Permitted Mortgagee to the Successor Agency upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid security financing interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure;
- (c) The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of that portion of the Site;
- (d) The costs of any improvements made by the Permitted Mortgagee; and
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts in subsections a., b., c. and d., above, become part of the security financing interest debt and such debt had continued in existence to the date of payment by the Successor Agency.

5. [§ 403E] Right of the Successor Agency to Cure Security Financing Interest Default.

In the event of a default or breach by the Developer of a security financing interest instrument with respect to the Site, or any portion thereof, prior to the completion of development of improvements thereon, and the Permitted Mortgagee has not exercised its option to complete the development, the Successor Agency may cure

the default prior to the completion of any foreclosure. In such event, the Successor Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Successor Agency in curing the default. The Successor Agency shall be entitled to a lien upon the Developer's fee interest to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to any Permitted Encumbrance as provided in this Agreement and executed for the sole purpose of obtaining funds to develop the Site (or to replace or refinance any such Permitted Encumbrance) as authorized herein.

6. [§ 403F] Affirmation of Agreement in Bankruptcy.

If Developer files a bankruptcy petition and rejects this Agreement, Successor Agency shall, upon the request of a Permitted Mortgagee, affirm this Agreement, and the Successor Agency will enter into a new Agreement on the same terms and conditions with the Permitted Mortgagee immediately upon Developer's rejection of this Agreement.

V. [§ 500] [INTENTIONALLY OMITTED]

VI. [§ 600] DEFAULTS; REMEDIES; TERMINATION

A. [§ 601] Defaults - General; Notice.

A failure or delay by any party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The non-defaulting party shall give written notice of default to the defaulting party, specifying the default complained of and the actions required to cure the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies, or deprive a party of its right to institute and maintain any actions or proceedings which are allowed by this Agreement.

B. [§ 602] Legal Actions.

1. [§ 602A] Institution of Legal Actions.

Any legal action must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court in that County, or in the Federal District Court for the Northern District of California.

2. [§ 602B] Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [§ 602C] Acceptance of Service of Process.

In the event that any legal action is commenced by the Successor Agency against the Developer, service of process on the Developer shall be made by personal service upon the Developer, or in such manner as may be provided by law, and shall be valid whether made within or without the State of California.

C. [§ 603] Rights and Remedies are Cumulative.

Except with respect to rights and remedies which are expressly declared to be exclusive in this Agreement, the rights and remedies of any non-defaulting party are cumulative and the exercise of one or more of such rights or remedies shall not preclude the exercise by the non-defaulting party, at the same or different times, of any other rights or remedies for the same default or any other default by the defaulting party.

D. [§ 604] Damages; Specific Performance.

If a party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default as provided in Section 601. If the default is not cured within thirty (30) days after service of the notice of default, or if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly within a reasonable period of time after commencement, the defaulting party shall, except as otherwise expressly provided in this Agreement, be liable to the other party for damages caused by such default, and the non-defaulting party, at its option, may institute an action for specific performance of the terms of this Agreement, or exercise any other remedy or remedies which it may be entitled to; provided that the parties shall only have a right to terminate this Agreement in accordance with Section 605 below.

E. [§ 605] Remedies and Rights of Termination.

1. [§ 605A] Termination by Developer.

Subject to Section 705 of this Agreement, in addition to any other termination rights of Developer set forth in this Agreement, the Developer may terminate this Agreement if the Successor Agency fails to perform any of the Successor Agency's Material Obligations and such failure is not cured within thirty (30) days after written notice by the Developer; or if it is not practicable to cure such default within the 30-day period and (a) the Successor Agency has not commenced the curing of such default

within the 30-day period, or (b) the Successor Agency is not otherwise diligently prosecuting such cure to completion.

2. [§ 605B] Termination by Successor Agency.

In addition to any other termination rights of the Successor Agency set forth in this Agreement, the Successor Agency at its option may terminate this Agreement in the event of the following:

(a) The Developer assigns or attempts to assign this Agreement, or any rights therein, or makes or attempts to make any total or partial sale, transfer or conveyance of the whole or any part of the Site or the improvements thereon, except as permitted by this Agreement, including, without limitation, Sections 109A, 109B and 109C of this Agreement.

(b) Subject to Section 705 of this Agreement, Developer is in default of any of Developer's Material Obligations and, as provided in Section 604 above, such default is not cured by Developer within thirty (30) days after written notice by the Successor Agency; or if it is not practicable to cure such default within the 30-day period and (1) Developer has not commenced the curing of such default within the 30-day period, or (2) Developer is not otherwise diligently prosecuting such cure to completion.

F. [§ 606] Successor Agency's Right to Purchase Project for Developer's Failure to Complete the Project.

In addition to any other remedies available to the Successor Agency hereunder, if the Project fails to meet the date to commence construction pursuant to Attachment 5 in this Agreement, the Successor Agency shall have the option of purchasing the Site, including the Successor Agency Parcels, from the Developer. For purposes of this Section, "under construction" shall mean that Developer has obtained its first Building Permit or grading permit, whichever occurs first.

To exercise such option, the Successor Agency shall provide Developer with written notice of its exercise of this option within ninety (90) days after expiration of the period to commence construction pursuant to Attachment 5 in this Agreement. As soon as practicable thereafter, the Successor Agency and Developer shall mutually obtain an MAI appraisal of the fair market value of the Site. The appraisal shall consider the value of the land as entitled at the time of the appraisal. Within sixty (60) days after the parties obtain an appraisal, the Successor Agency shall tender payment based upon that appraised value and Developer shall convey title to the Site to the Successor Agency by means of a grant deed. Other terms of sale, such as closing costs, condition of the Site, and title insurance shall be substantially the same terms as provided in the Interim DDA for the sale of the Successor Agency Parcels to Developer.

VII. [§ 700] GENERAL PROVISIONS.

A. [§ 701] Notices, Demands, and Communications Between the Parties.

Formal notices, demands, and communications between the Successor Agency and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Successor Agency and the Developer as designated in Section 107 and Section 108 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 701.

B. [§ 702] Conflict of Interests.

No member, official or employee of the Successor Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he, or she is, directly or indirectly, interested.

C. [§ 703] Warranty Against Payment of Consideration for Agreement.

The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

D. [§ 704] Nonliability of Successor Agency Officials and Employees.

No member, official, or employee of the Successor Agency shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the Successor Agency or for any amount which may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement.

E. [§ 705] Enforced Delay; Extension of Time of Performance.

Notwithstanding specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; civil disturbances; strikes; lock-outs; riots; floods; unusually severe rain beyond the anticipated average annual number of rain days over a historic ten (10) year period based on National Weather Service data; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or enjoining of the performance of the

terms of this Agreement. 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. Notwithstanding the foregoing, the total time period excused under this Section for all causes shall not exceed two (2) years, except in the event of acts of God (in which case Developer shall provide Successor Agency with notice of such act of God and shall endeavor to diligently commence to perform the obligations delayed by such act of God).

F. [§ 706] Inspection of Books and Records.

The Successor Agency has the right at all reasonable times to inspect the books and records of the Developer pertaining to the Site and/or the Project as pertinent to the purposes of this Agreement.

G. [§ 707] Severability.

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

H. [§ 708] Representations of Authority.

1. [§ 708A] Successor Agency's Representations.

The Successor Agency represents and warrants to Developer that (i) it is a public body, corporate and politic, existing pursuant to California Health and Safety Code Section 34177, which has been authorized to transact business pursuant to action of the Successor Agency Board, (ii) it has full right, power and authority to enter into this Agreement and to carry out all actions contemplated by this Agreement, (iii) that this Agreement has been duly authorized, executed and delivered by the Successor Agency, and subject to and only upon the approvals by both the Redevelopment Dissolution Countywide Oversight Board For Santa Clara County and the State of California Department of Finance, this Agreement will constitute the valid, binding and enforceable obligation of the Successor Agency, and no consent of any other party is or shall be required to consummate the transactions contemplated hereby, (iv) as of the date of this Agreement, there is and shall be no litigation filed, or to the best of the Successor Agency's knowledge, pending or threatened against it which could affect materially the Successor Agency's ability to perform its obligations pursuant to this Agreement, and (v) to the best of Successor Agency's knowledge, Successor 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 Successor Agency is a party or by which it is bound.

2. [§ 708B] Developer's Representations.

The Developer represents and warrants to Successor Agency (i) that Developer is a duly authorized and existing Delaware limited partnership which is and shall remain during the term of this Agreement qualified to do business in the State of California, (ii) that it is a wholly owned subsidiary of Predecessor and that Predecessor's sole general partner, which is Predecessor's managing partner, is Boston Properties, Inc., a duly authorized and existing Delaware corporation, which is and shall remain during the term of this Agreement qualified to do business in the State of California, (iii) that Developer has full right, power and authority to enter into this Agreement and to carry out all actions contemplated by this Agreement, (iv) that the execution and delivery of this Agreement were duly authorized by proper action of Developer, Predecessor and Predecessor's sole managing General Partner and no consent, authorization or approval of any person is or shall be necessary in connection with such execution and delivery or to carry out all actions contemplated by this Agreement except as have been obtained and are in full force and effect, and that this Agreement constitutes the valid, binding and enforceable obligation of Developer, (v) as of the date of this Agreement, there is and shall be no litigation filed, or to the best of the Developer's knowledge, pending or threatened against it, Predecessor or Predecessor's managing general partner, which could affect materially the Developer's ability to perform its obligations pursuant to this Agreement, and (vi) to the best of Developer's knowledge, 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.

Developer shall provide Successor Agency with evidence reasonably satisfactory to Successor Agency confirming the foregoing representation and warranties, including copies of all necessary corporate and partnership resolutions approving this Agreement.

3. [§ 708C] Intentionally deleted.

4. [§ 708D] Computation of Time.

The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays observed by the Successor Agency of San Jose. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

VIII. [§ 800] SPECIAL PROVISIONS.

A. [§ 801] Amendment of Redevelopment Plan.

Pursuant to provisions of the Redevelopment Plan for modifications or amendment thereof, the Successor Agency agrees that no amendment which changes the uses or Scope of Development permitted on the Site shall be made or become effective without the prior written consent of the Developer. Amendments to the Redevelopment Plan applying to other property in the Project Area shall not require the consent of the Developer unless otherwise required by law.

B. [§ 802] Submission of Documents to the Successor Agency for Approval.

Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the Successor Agency for approval, which shall be deemed approved if not acted on by the Successor Agency within a specified time, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the Successor Agency within the stated time. If there is no time specified herein for such Successor Agency action, the Developer may submit a letter requiring Successor Agency approval or rejection of documents within ten (10) business days after submission to the Successor Agency or such documents shall be deemed approved.

C. [§ 803] Approvals.

Approvals required of the Successor Agency (except for approvals expressly identified herein as being in the sole discretion of the Successor Agency) or Developer shall not be unreasonably withheld, and approval or disapproval shall be given within the time set forth in the Schedule of Performance and/or this Agreement or, if no time is given, within a reasonable time. The Successor Agency Executive Officer or his/her designee shall have the authority to act on behalf of the Successor Agency with regard to any and all actions required of the Successor Agency under this Agreement. Such actions include, but are not limited to the issuance of approvals and disapprovals, extensions of deadlines in the Schedule of Performance and execution of all documents except amendments to this Agreement.

D. [§ 804] Amendments to this Agreement.

The Developer and the Successor Agency shall mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the Successor Agency, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

E. [§ 805] Assignment.

The Successor Agency shall be entitled to assign its rights or obligations pursuant to this Agreement to any successor in interest to the Successor Agency of San Jose or in connection with any financing for the benefit of the Successor Agency at any time and from time to time without the prior written consent of the Developer. The Successor Agency shall provide written notice to Developer within thirty (30) days of any such assignment.

F. [§ 806] Governing Law/Venue.

The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

G [§ 807] Development Costs.

The parties acknowledge that, pursuant to the terms of the Original DDA, Developer delivered to Redevelopment Agency an amount equal to \$20,000, which amount helped to defray the former Agency's costs in connection with performing its processing and review obligations in connection with this Agreement. Developer shall provide additional funds up to \$20,000 at a rate of \$200/hour for any staff costs associated with processing and reviewing obligations in connection with this amended Agreement. The Successor Agency shall provide Developer with an invoice for payment outlining the staff member, date and number of hours spent performing duties associated with formulating and processing this amended Agreement. The Successor Agency shall submit the invoice within 5 business days after approval of the amended Agreement by the State of California Department of Finance, and payment shall be due from Developer within 30 days after Developer receives the invoice.

H [§ 808] Distinction from Regulatory Authority of the Successor Agency and City.

Developer understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the Successor Agency or City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Site as contemplated by this Agreement.

IX. [§ 900] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS.

This Agreement shall be executed in duplicate originals each of which is deemed to be an original. This Agreement includes 30 pages and 11 attachments which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Site.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Successor Agency and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Successor Agency and the Developer.

THE SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF SAN JOSE

APPROVED AS TO FORM:

Name: Kevin Fisher
Title: Assistant City Attorney

By: _____
Name: Jennifer A. Maguire
Title: Executive Officer

BXP ALMADEN ASSOCIATES LP,
a Delaware limited partnership

BY: BXP CALIFORNIA GP LLC,
a Delaware limited liability company,
its general partner

BY: BOSTON PROPERTIES LIMITED PARTNERSHIP,
a Delaware limited partnership,
its sole member

BY: BOSTON PROPERTIES, INC.,
a Delaware corporation,
its general partner

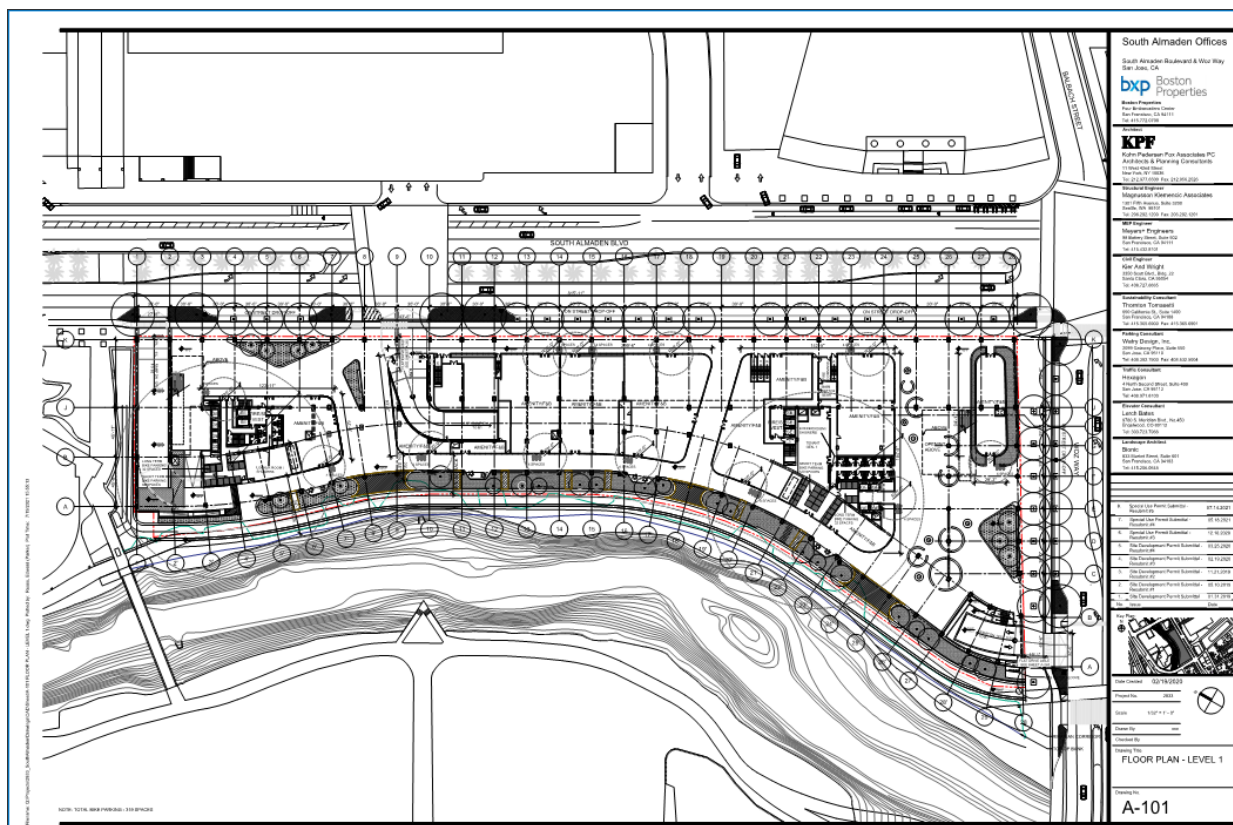
BY: _____
Name:
Title:

ATTACHMENTS

ATTACHMENT NO. 1	SITE MAP
ATTACHMENT NO. 2	SITE LEGAL DESCRIPTION
ATTACHMENT NO. 3	JUNE 22, 2010 GRANT DEED
ATTACHMENT NO. 4	SCOPE OF DEVELOPMENT
ATTACHMENT NO. 5	SCHEDULE OF PERFORMANCE
ATTACHMENT NO. 6	MEMORANDUM OF AMENDED AND RESTATED DDA
ATTACHMENT NO. 7A	INTENTIONALLY OMITTED
ATTACHMENT NO. 7B	INTENTIONALLY OMITTED
ATTACHMENT NO. 8	INTENTIONALLY OMITTED
ATTACHMENT NO. 9	METHOD OF FINANCING
ATTACHMENT NO. 10	INTENTIONALLY OMITTED
ATTACHMENT NO. 11	INTENTIONALLY OMITTED
ATTACHMENT NO. 12	INSURANCE REQUIREMENTS
ATTACHMENT NO. 13	FORM OF CERTIFICATE OF COMPLIANCE

DRAFT

SITE MAP



ATTACHMENT NO. 2

SITE LEGAL DESCRIPTION

PARCEL ONE:

BEGINNING AT A POINT ON THE WESTERLY LINE OF VINE STREET, DISTANT SOUTH 30° 20' EAST 291.33 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF AUZERAIS AVENUE; THENCE SOUTH 49° WEST 167.34 FEET; THENCE AT RIGHT ANGLES, SOUTH 41° EAST 40 FEET; THENCE SOUTH 64 3/4° EAST 4.16 FEET; THENCE NORTH 49° EAST 157.33 FEET TO A POINT ON THE WESTERLY LINE OF VINE STREET; THENCE ALONG SAID WESTERLY LINE NORTH 30° 20' WEST 44.76 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM:

THAT PORTION THEREOF WITHIN THE BOUNDS OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM ANNA M. HIAM TO E. PORTALUPI, DATED JULY 29, 1918 AND RECORDED IN BOOK 470 OF DEEDS, PAGE 520, SANTA CLARA COUNTY RECORDS, AS FOLLOWS:

BEGINNING AT A POINT DISTANT SOUTH 49° WEST 125.34 FEET FROM THE MOST NORTHERLY CORNER OF SAID PARCEL ONE; THENCE CONTINUING ALONG SAID LINE SOUTH 49° WEST 42 FEET TO A STAKE; THENCE AT RIGHT ANGLES SOUTH 41° EAST 40 FEET TO A STAKE; THENCE SOUTH 64 3/4° EAST 4.16 FEET; THENCE NORTH 49° EAST 42 FEET; THENCE ON A STRAIGHT LINE TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A POINT ON THE WESTERLY LINE OF VINE STREET, DISTANT SOUTH 30° 20' EAST 336.09 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF AUZERAIS AVENUE; THENCE SOUTH 49° WEST 157.33 FEET TO A POINT ON THE WESTERLY LINE OF SAID LAND OF BORCHERS; THENCE ALONG SAID WESTERLY LINE, SOUTH 64° 45' EAST 48.04 FEET TO THE MOST SOUTHERLY CORNER THEREOF; THENCE ALONG THE SOUTHERLY LINE THEREOF NORTH 49° EAST 129.70 FEET TO THE WESTERLY LINE OF VINE STREET; THENCE, ALONG SAID LINE NORTH 30° 20' WEST 44.76 FEET TO THE PLACE OF BEGINNING.

PARTICULARLY INCLUDED WITH SAID PARCEL ONE AND PARCEL TWO ARE THOSE AREAS, SUCH AS MAY BE DETERMINED, WITHIN THE CANOAS CREEK (ARROYO TULARES DE LAS CANOAS) ADJOINING THE GENERALLY WESTERLY BOUNDARIES DESCRIBED IN SAID DEED TO SOPHIE K. BORCHERS, AND BOUNDED BY THE CENTER LINE OF SAID CANOAS CREEK, AS IT EXISTED IN 1873 AND BEFORE.

PARCEL THREE:

COMMENCING AT A POINT IN THE WESTERLY LINE OF VINE STREET DISTANT SOUTH 30° 15' EAST 419.85 FEET FROM THE INTERSECTION THEREOF WITH THE SOUTHERLY LINE OF AUZERAIS AVENUE; THENCE WESTERLY AND PARALLEL WITH THE SOUTHERLY LINE OF THE LAND NOW OR FORMERLY OF L.F. CLAUS TO THE MIDDLE OF THE CHANNEL OF THE ARROYO DE LOS TULARES DE CANOAS; THENCE SOUTHEASTERLY AND UPON THE CHANNEL OF THE SAID ARROYO TO THE NORTHWEST CORNER OF LAND FORMERLY OF WEHNER, AND NOW OF WAKEFIELD; THENCE NORTH 48° 35' EAST ALONG THE NORTHERLY LINE OF LAND OF WAKEFIELD, 87.30 FEET TO THE WESTERLY LINE OF VINE STREET AND THENCE NORTHERLY ALONG SAID WESTERLY LINE 38.10 FEET TO THE PLACE OF BEGINNING.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR INSTALLATION AND MAINTENANCE OF LANDSCAPING AND RIGHTS OF REASONABLE VEHICULAR INGRESS AND EGRESS PURPOSES AS GRANTED IN THAT CERTAIN LANDSCAPING AND ACCESS EASEMENT RECORDED JUNE 22, 2010 AS INSTRUMENT NO. 20747850, OFFICIAL RECORDS.

PARCEL FIVE:

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF ALMADEN BOULEVARD (FORMERLY VINE STREET) AT THE NORTHEASTERLY CORNER OF PARCEL 2, SO DESIGNATED AND DELINEATED ON THE PARCEL MAP RECORDED DECEMBER 23, 1993, IN BOOK 652 OF MAPS, PAGES 33 AND 34, SANTA CLARA COUNTY RECORDS AND AS CORRECT BY CERTIFICATE OF CORRECTION RECORDED MAY 2, 1994, IN BOOK N423 OF OFFICIAL RECORDS, PAGE 1161; THENCE ALONG THE NORTHWESTERLY, SOUTHWESTERLY AND SOUTHEASTERLY BOUNDARY LINES OF SAID PARCEL 2, SOUTH 60°06'26" WEST 162.00 FEET, SOUTH 29°53'34" EAST 18.00 FEET, SOUTH 60°06'26" WEST 112.98 FEET, SOUTH 10°46'25" EAST 42.38 FEET, AND NORTH 60°05'53" EAST 107.51 FEET TO A POINT IN THE EASTERLY LINE OF THE LAND DESCRIBED IN THE GRANT DEED BY VINE STREET PROPERTIES I AND VINE STREET PROPERTIES II TO SANTA CLARA VALLEY WATER DISTRICT RECORDED APRIL 15, 1998, DOCUMENT NO. 14140104, OFFICIAL RECORDS (MONUMENTED WITH NAILS AND SHINERS UPON SURVEY BY SANTA CLARA VALLEY WATER DISTRICT); THENCE ALONG SAID EASTERLY LINE FROM POINT TO POINT BETWEEN SUCH MONUMENTS, SOUTH 35°21'57" EAST 27.20 FEET, SOUTH 39°48'30" EAST 31.74 FEET, SOUTH 41°51'14" EAST 31.09 FEET, SOUTH 43°22'18" EAST 31.51 FEET, SOUTH 43°47'51" EAST 37.25 FEET, SOUTH 34°34'48" EAST 60.61 FEET, SOUTH 30°09'01" EAST 26.36 FEET, SOUTH 29°36'47" EAST 41.64 FEET, SOUTH 29°59'09" EAST 41.47 FEET, SOUTH 29°32'04" EAST 41.48 FEET, SOUTH 24°51'33" EAST 41.44 FEET, SOUTH 18°22'27" EAST 41.42 FEET, SOUTH 12°13'17" EAST 14.38 FEET, SOUTH 12°12'43" EAST 27.24 FEET, SOUTH 5°26'20" EAST 41.47 FEET, SOUTH 1°18'44" WEST 41.23 FEET, SOUTH 5°38'03" WEST 41.65 FEET, SOUTH 5°57'04" WEST 41.26 FEET, SOUTH 5°44'39" WEST 41.86 FEET; SOUTH 5°34'57" WEST 40.97 FEET, SOUTH 5°48'44" EAST 42.72 FEET, AND SOUTH 27°36'29" EAST 30.86 FEET TO A POINT IN THE NORTHWESTERLY LINE OF WOZ WAY (FORMERLY BALBACH STREET, AS WIDENED, TITLE TO WHICH WAS VESTED IN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE AS A RESULT OF DEEDS RECORDED JANUARY 26, 1988, IN BOOK K428, PAGE 934, AUGUST 26, 1988, IN BOOK K655, PAGE 2001, MAY 16, 1989, IN BOOK K951, PAGES 789 AND 792, NOVEMBER 21, 1989, IN BOOK L172, PAGE 1387, JUNE 5, 1990, IN BOOK L376, PAGE 1948, OCTOBER 24, 1991, IN BOOK L901, PAGE 1963, AND DECEMBER 27, 1991, IN BOOK L982, PAGE 1418, OFFICIAL RECORDS) THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 58°38'46" EAST 39.41 FEET, NORTH 58°38'36" EAST 38.01 FEET, NORTH 58°38'02" EAST 37.01 FEET, NORTH 58°38'46" EAST 45.01 FEET, NORTH 59°16'50" EAST 65.01 FEET, NORTH 58°01'19" EAST 55.04 FEET, AND NORTH 58°38'40" EAST 44.97 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF ALMADEN BOULEVARD (FORMERLY VINE STREET); THENCE ALONG SAID SOUTHWESTERLY LINE, NORTH 29°54'32" WEST 611.52 FEET AND NORTH 29°54'07" WEST 204.34 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS LOT 1 AND THE DESIGNATED REMAINDERS AS SHOWN ON TRACT 9468 RECORDED MAY 18, 2004 IN BOOK 770 OF MAPS PAGE(S) 7.

EXCEPTING THEREFROM:

THOSE PORTIONS THEREOF TITLE TO WHICH WAS VESTED IN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE BY (1) DEED FROM ROBERT MCKAY BURTON, JR., ET AL, RECORDED JULY 29, 1992 AS INSTRUMENT NO. 11472992, BOOK M302, PAGE 1104, OFFICIAL RECORDS; AND (2) FINAL ORDER OF CONDEMNATION IN THE MATTER OF CITY OF SAN JOSE AND REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE VS. HELEN BERTHA DOOLEY, ET AL, RECORDED JANUARY 21, 1993 AS INSTRUMENT NO. 11739814, BOOK M593, PAGE 0592, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM:

THAT PORTION OF PARCEL 2, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN BOOK 652 OF MAPS, AT PAGES 33 AND 34, SANTA CLARA COUNTY RECORDS AND CORRECTED BY THE CERTIFICATE RECORDED MAY 2, 1994 AS INSTRUMENT NO. 12476432 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHWESTERLY LINE OF ALMADEN BOULEVARD AT THE SOUTHEASTERLY CORNER OF SAID PARCEL 2; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 2, SOUTH 60°05'53" WEST 181.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE, SOUTH 60°05'53" WEST 107.51 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL 2; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL 2, NORTH 10°46'25" WEST 42.38 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL 2; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 2, NORTH 60°06'26" EAST 89.79 FEET; THENCE LEAVING SAID NORTHWESTERLY LINE, SOUTH 35°21'57" EAST 40.21 FEET TO THE POINT OF BEGINNING, AS GRANTED TO SANTA CLARA VALLEY WATER DISTRICT, A PUBLIC ENTITY BY DEED RECORDED MARCH 8, 2005 AS INSTRUMENT NO. 18264640 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION DESCRIBED IN THAT CERTAIN GRANT DEED TO BP ALMADEN ASSOCIATES LLC, A DELAWARE LIMITED LIABILITY COMPANY BY DOCUMENT RECORDED JUNE 22, 2010 AS INSTRUMENT NO. 20747848.

APN: 264-28-153 (Parcels One and Two)

264-28-023 (Parcel Three)

264-28-019, 022, 024, 025, 028, 149, 152, 160, 167, 168, 169, 172, 173, 174, 175, 176 (Parcel Five)

ATTACHMENT NO. 3

JUNE 22, 2010 GRANT DEED

DRAFT

First American Title Company

Escrow No.: NCS-442157-CC

Recording Requested by
The Redevelopment Agency
of the City of San Jose
200 East Santa Clara St.
14th Floor, Tower
San Jose, California 95113

and when Recorded Return to:
Boston Properties Limited Partnership
Four Embarcadero Center
Lobby Level, Suite One
San Francisco, California 94111

RECORDED FOR THE BENEFIT OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE AND IS EXEMPT FROM
FEE PER GOVERNMENT CODE §§ 27383 AND 6103

First American Title Company hereby
certifies that the within instrument is a true
and correct copy of the original instrument
recorded in the office of the recorder of the
County of Santa Clara, State of California,
on 6-22-10
Recorder's Serial No 20747848
FIRST AMERICAN TITLE COMPANY
By K. Schlemmer

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, the REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, a public body, corporate and politic, of the State of California (herein called "Grantor"), acting to carry out the Redevelopment Plan (herein called "Redevelopment Plan") for the Guadalupe-Auzerais Redevelopment Project Area, under the Community Redevelopment Law of the State of California, hereby grants to BP Almaden Associates LLC, a Delaware limited liability company (herein called "Grantee"), the real property (the "Property") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Property is conveyed subject to the Redevelopment Plan and pursuant to an Amended and Restated Disposition and Development Agreement (the "DDA") entered into by and between the Grantor and the Grantee and dated June 8, 2010. The Property is also conveyed subject to easements of record.
2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall not use the Property for other than the uses specified in the Redevelopment Plan and the DDA.
3. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it 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.

All deeds, leases or contracts made relative to the Property, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

- a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her 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 land herein conveyed. The foregoing covenants shall run with the land."
 - b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 land herein leased."
 - c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the contracting, subcontracting, transferring, or assignment of the work hereby contracted for nor shall the contractor himself or herself, or any persons claiming under or through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, number, employment or work of contractors, subcontractors, transferees or assignees in the work which is the subject of the contract."
4. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or

security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. Except as otherwise provided, the covenants contained in paragraph 2 of this Grant Deed shall remain in effect until the termination date of the Redevelopment Plan. The covenants against discrimination contained in paragraph 3 of this Grant Deed shall remain in perpetuity.
6. The covenants contained in this Grant Deed shall be binding for the benefit of the Grantor and the City of San Jose and any successor in interest to the City of San Jose or in connection with any financing for the benefit of the Grantor or the City of San Jose (the "Benefited Parties"), and such covenants shall run in favor of the Benefited Parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Benefited Parties, in the event of any breach of any covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach (subject to the provisions of the DDA as to notice and cure). The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by any of the Benefited Parties.
7. No present or future, official, employee, advisor, participant, or agent of the Grantor or City, or either of their successors shall be personally liable directly or indirectly to Grantee, or any successor in interest, in the event of any default or breach by the Grantor or for any amount which may become due to Grantee, or any of their successors, under or in connection with this Grant Deed, or any instrument or certificate executed in connection with this Grant Deed, or any amendment(s) or modification(s) to any of the foregoing made at any time or times heretofore or hereafter.

Neither Grantee, nor any present or future shareholder, officer, director, partner, employee, trustee, member, affiliate, beneficiary, advisor, principal, participant or agent of or in Grantee, shall have any personal liability, directly or indirectly, under or in connection with this Grant Deed, or any instrument or certificate executed in connection with this Grant Deed, or any amendment(s) or modification(s) to any of the foregoing made at any time or times, heretofore or hereafter.
8. In the event of any express conflict between this Grant Deed or the DDA, the provisions of the DDA shall control.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this 21 day of June, 2010.

"GRANTOR"

THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

Approved as to Form:


Supervising Sr. Associate Counsel

By: 
Harry S. Mavrogenes
Executive Director

"GRANTEE"

BP ALMADEN ASSOCIATES LLC,
a Delaware limited liability company

By: Boston Properties Limited Partnership,
a Delaware limited partnership, its sole
member

By: Boston Properties, Inc., a
Delaware corporation, its general
partner

By: **SIGNED IN COUNTERPART**
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this 29 day of June, 2010.

"GRANTOR"

THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

Approved as to Form:

SIGNED IN COUNTERPART Supervising Sr. Associate Counsel	By: SIGNED IN COUNTERPART Harry S. Mavrogenes Executive Director
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"GRANTEE"

BP ALMADEN ASSOCIATES LLC,
a Delaware limited liability company

By: Boston Properties Limited Partnership,
a Delaware limited partnership, its sole member

By: Boston Properties, Inc., a
Delaware corporation, its general partner

By: 
Print Name: BOB PESTER
Title: SENIOR VICE PRESIDENT
AND REGIONAL MANAGER

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

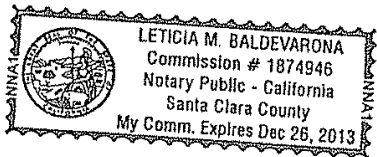
County of Santa Clara

On 6/21/2010 before me, Leticia M. Baldevarona Notary Public
Date Here Insert Name and Title of the Officer
 personally appeared Harry S. Mavrogenes
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Leticia M. Baldevarona
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Grant Deed

Document Date: 6/21/2010 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

☐ Corporate Officer — Title(s): _____ ☐ Corporate Officer — Title(s): _____

☐ Individual ☐ Partner — ☐ Limited ☐ General ☐ Individual ☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact ☐ Attorney in Fact

☐ Trustee ☐ Trustee

☐ Guardian or Conservator ☐ Guardian or Conservator

☐ Other: _____ ☐ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

ACKNOWLEDGEMENT

State of California
County of San Francisco

On June 21, 2010 before me, Sofia m. Bautista ^{NOTARY}
(insert name and title of officer) _{PUBLIC}

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

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

WITNESS my hand and official seal

Signature Sofia m. Bautista (Seal)



EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

Beginning at a point on the Westerly line of Vine Street, distant South 30° 20' East 291.33 feet from the point of intersection thereof with the Southerly line of Auzerais Avenue; thence South 49° West 167.34 feet; thence at right angles, South 41° East 40 feet; thence South 64 3/4° East 4.16 feet; thence North 49° East 157.33 feet to a point on the Westerly line of Vine Street; thence along said Westerly line North 30° 20' West 44.76 feet to the place of beginning.

EXCEPTING THEREFROM:

That portion thereof within the bounds of the parcel of land described in the deed from Anna M. Hiam to E. Portalupi, dated July 29, 1918 and recorded in Book 470 of Deeds, page 520, Santa Clara County Records, as follows:

Beginning at a point distant South 49° West 125.34 feet from the most Northerly corner of said PARCEL ONE; thence continuing along said line South 49° West 42 feet to a stake; thence at right angles South 41° East 40 feet to a stake; thence South 64 3/4° East 4.16 feet; thence North 49° East 42 feet; thence on a straight line to the point of beginning.

PARCEL TWO:

Beginning at a point on the Westerly line of Vine Street, distant South 30° 20' East 336.09 feet from the point of intersection thereof with the Southerly line of Auzerais Avenue; thence South 49° West 157.33 feet to a point on the Westerly line of said land of Borchers; thence along said Westerly line, South 64° 45' East 48.04 feet to the most Southerly corner thereof; thence along the Southerly line thereof North 49° East 129.70 feet to the Westerly line of Vine Street; thence, along said line North 30° 20' West 44.76 feet to the place of beginning.

Particularly included with said PARCEL ONE and PARCEL TWO are those areas, such as may be determined, within the Canoas Creek (Arroyo Tulares de Las Canoas) adjoining the generally Westerly boundaries described in said deed to Sophie K. Borchers, and bounded by the center line of said Canoas Creek, as it existed in 1873 and before.

PARCEL THREE:

Commencing at a point in the Westerly line of Vine Street distant South 30° 15' East 419.85 feet from the intersection thereof with the Southerly line of Auzerais Avenue; thence Westerly and parallel with the Southerly line of the land now or formerly of L.F. Claus to the middle of the channel of the Arroyo de los Tulares de Canoas; thence Southeasterly and upon the channel of the said Arroyo to the Northwest corner of land formerly of Wehner, and now of Wakefield; thence North 48° 35' East along the Northerly line of land of Wakefield, 87.30 feet to the Westerly line of Vine Street and thence Northerly along said Westerly line 38.10 feet to the place of beginning.

APN: 264-28-023 and 264-28-153

ATTACHMENT NO. 4
SCOPE OF DEVELOPMENT
PLAZA AT ALMADEN OFFICE COMPLEX

Note: References herein to "this Agreement" and "the DDA" mean the Disposition and Development Agreement of which this Attachment No. 4 is a part; references to the "Developer" mean the Developer under the DDA and its permitted successors and assigns; references to "Attachments" mean the Attachments to the DDA unless otherwise specified. This Attachment is intended to more specifically address development issues. In the event of any conflict between the terms and provisions of this Attachment and the DDA, the DDA shall control.

I. GENERAL

Subject to the terms of this Agreement, the Developer shall construct, or cause to be constructed, all on-site and off-site improvements associated with an office complex development ("Project"), consisting of office uses, retail/amenity uses, parking structures, landscaping and/or other related uses. The Project shall include the whole or any part of the proposed development in the event phasing of the development is deemed necessary.

The Project shall be in conformity with the Redevelopment Plan for the Guadalupe-Auzerais Redevelopment Project Area. The Project shall be designed and developed as an integrated complex in which the buildings will have first-class architectural quality and character. Public spaces and open spaces between the buildings where they exist shall be designed, landscaped and developed with the same degree of quality. Particular attention shall be paid to pedestrian activities, massing, scale, bulk, color and materials, with special consideration given to the Guadalupe River interface. The Successor Agency and the Developer will cooperate and direct their consultants, architects and/or engineers to cooperate so as to ensure the continuity and coordination vitally necessary for the proper and timely completion of the development of the Site.

II. SITE

The Site consists of approximately 159,553 square feet (3.663 acres) as more fully described in the in the DDA. It is located on the west side of Almaden Boulevard, north of Woz Way in San Jose, California. The rear of the Site skirts the Guadalupe River.

III. DEVELOPMENT

A. On-Site Improvements

The improvements to be developed by the Developer on the Site, which

shall be designed as provided below and in the DDA, shall comprise of a two tower office development, consisting of office uses, retail/amenity uses, parking structures, landscaping and/or related uses.

The Project is a commercial development with two towers over a multi-story podium located on the site of a large surface parking lot just south of 303 Almaden. With high density and efficient 50' to 60' deep window-to-core wall spans on office floors, street level amenities and a porous street level space that connects Almaden Blvd to the Guadalupe River trail via several paseos, this development is poised to anchor the south end of downtown San Jose.

The Project includes two 16-story towers with 3 below grade parking levels. The Project is designed to contain up to approximately 1.7 million gross square feet of office and amenity space, with approximately 1,279 stalls, or approximately 400,000 gross square feet of basement parking.

It is contemplated that these measurements may vary somewhat until the planning and design of the Project is completed. Any significant changes to this Scope of shall require the prior written approval of the Planning Director of the City, which approval shall not be unreasonably withheld.

Market conditions may cause the Developer, at the Developer's discretion, to change the specifications of the Project.

The ground floor of the Project shall be designed to maximize public accessibility to and interaction with the Guadalupe River Walkway, and shall be subject to the provisions of the DDA, particularly Attachment Number 8.

B. Architecture and Design

1. General Standards

The Developer agrees that the Site shall be developed in accordance with any land use approvals required by the Successor Agency, the City of San Jose or any other governmental entity having jurisdiction. Any change from the provisions, design criteria, and property development standards contained in this Scope of Development must receive the prior written approval of the Planning Director of the City.

C. Landscaping

All open spaces on the Site (including setback areas) shall be landscaped

pursuant to plans approved by the Successor Agency in such a manner as to integrate with public sidewalks and the Guadalupe River interface. Landscaping includes such materials as paving, trees, shrubs and other plan materials, plaza furniture, topsoil preparation, automatic irrigation, landscape and pedestrian lighting and water elements.

Landscaping shall carry out the objectives and principles of the Developer's and Successor Agency's desire to accomplish a first-class aesthetic environment.

D. Signs

All signs on the exteriors of buildings and structures developed as a part of the Project must conform to the applicable City sign ordinance.

E. On-Site Demolition, Clearance and Site Preparation

The Developer agrees to perform, or cause to be performed, as part of the Project, the following work on the Site and in the public areas bordering the Site in accordance with plans and specifications provided by the Developer and approved by the Successor Agency.

1. As necessary for the timely development of the Site, demolish and remove all aboveground structures, pavements, walks, curbs, gutters and other aboveground improvements.
2. As necessary for the timely development of the Site, remove and/or relocate overhead utility systems and subsurface utility systems now in service which lie immediately below the surface on-site. Remove and/or relocate as necessary any utilities now in service, such as storm sewers, sanitary sewers, water system, underground electrical systems and telephone and gas systems.
3. As necessary for the timely development of the Site, backfill with suitable soil or materials and grade to curb level, or such lower level as the Developer shall designate, consistent with the Developer's plans and drawings as approved by the Successor Agency.
4. Include in the general contractor's scope of work, as necessary for the timely development of the Site, remediation of soil conditions as required by all governmental authorities having jurisdiction.

F. Off-Site Improvements

1. As necessary for the timely development of the Site, clear, grub

and grade the perimeter of the Site.

2. As necessary for the timely development of the Site, design and improve street frontages along the boundaries of the Site to at least City standards or such higher standards deemed appropriate by the Successor Agency to complement the Project, which standards shall be consistent with the Redevelopment Plan. The design work, plans and drawings for some or all of the improvements identified in this Agreement shall be prepared by the Developer's architect or under the direction of the Developer and shall be submitted to Successor Agency staff for its review and approval. Successor Agency shall respond in writing approving, disapproving or reasonably requesting additional information within sixty (60) days after Developer delivers design documents. Off-site improvements under this subsection and undergrounding of certain utilities will consist of curbs and gutters, sidewalks and sidewalk scoring, street trees, irrigation, fire hydrants, street lighting and any other utilities necessary to service (to the property lines) and improvements on the Site.
3. As necessary for the timely development of the Site, Developer shall install fire hydrants in locations within the street rights-of-way which are deemed necessary by the City to serve the Project.
4. As necessary for the timely development of the Site, Developer shall ensure that all utilities necessary for the development of the Site are available at the property line.
5. As necessary for the timely development of the Site, Developer shall provide storm drainage for the Site that is satisfactory to the City Public Works Department.

G. Public Art

Developer shall include public art on or near the Site (provided that any location near the Site will need to be (i) within downtown San Jose, and (ii) approved by the City), the cost of which public art shall be not less than an amount equal to one percent (1%) of the total construction cost, excluding land acquisition costs, pursuant to the Successor Agency's construction cost index published at the time the building permit is issued total costs (including hard costs and soft costs but excluding land acquisition costs) incurred in connection with the development of the Project; provided that in no event shall Developer be required to incur costs for the public art in excess of one percent (1%) of the total costs incurred in connection with the development of the Project (the "Public Art Requirement"). The selection of the artist and the location of the public art of the Site shall be determined by the Developer at its sole discretion.

A. If the Public Art Requirement is fulfilled on the Site:

1. Artwork shall be substantially complete upon physical occupancy of the first tenant in the Project, pursuant to San Jose Municipal Code Section 22.08.020.
2. Location, artist selection and materials shall be at the sole discretion of Developer as outlined in this Agreement.
3. Developer agrees to provide documentation of costs fulfilling the Public Art Requirement.

B. If the Public Art Requirement is not fulfilled on the Site:

1. Developer shall inform City of its desire to fulfill the Public Art Requirement on public property within 24 months of going vertical with the building structure.
2. To the extent not located on the Site, the balance of the Public Art Requirement will be fulfilled on public property in the Downtown Growth Area as defined in the General Plan 2040.
3. The determination of the location of this public artwork not located on the Site will be at the discretion of the City. City agrees to receive input from the Developer as to sites that should be considered.
4. Developer agrees to compensate City for public art staff time administering any artwork projects on public property to fulfill the Public Art Requirement. Developer will provide compensation to the City equal to a minimum of 15% and a maximum of 30% of the amount of the Public Art Requirement being installed on public property (the "Installment") in advance of CITY incurring any costs hereunder so that CITY may draw against such Installment in its performance under this or any future agreement to administer any privately funded public art project on CITY property in fulfillment of the Public Art Requirement. The Installment paid to the City shall be in partial satisfaction of the Public Art Requirement, and not in addition to the Public Art Requirement. If any portion of the Installment(s) paid by Developer remains unspent by CITY at the expiration or termination of this AGREEMENT or following the installation of the artwork ("Remaining Installment"), CITY must return the Remaining Installment to Developer within 120 days after the earlier of (i) the expiration or termination of this AGREEMENT, whichever is applicable, and (ii) the installation of the artwork.
5. Developer agrees to pay for all costs associated with design, engineering, fabrication, delivery, installation, and any ongoing maintenance, repairs, or conservation of the Artwork, except to the extent such ongoing maintenance, repair or conservation costs are covered by the compensation provided to the City pursuant to B4 above.

Developer has the ability to install multiple pieces of artwork onsite, offsite, or a combination thereof so long as the total cost of the artwork complies with the 1% requirement. Any Artwork installed offsite will be subject to the process and costs outlined in B1 - B5 above.

IV. EASEMENTS

The Developer shall grant and permit all necessary and appropriate non-exclusive easements and rights reasonably required for the development of the Site, including but not limited to, easements and rights relating to the riparian corridor and easements and rights of vehicular access, pedestrian access, parking, all utility services, structural support and ventilation.

V. ENVIRONMENTAL MITIGATION RESPONSIBILITIES

The Developer is responsible for the environmental mitigation measures applicable to the design and construction of the project required by the Department of Planning, Building and Code Enforcement and stated as conditions of the Special Use Permit governing the Site.

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE PLAZA AT ALMADEN OFFICE COMPLEX

Note:

References herein to "this Agreement" and "the DDA" mean the Disposition and Development Agreement of which this Attachment No. 5 is a part; references to the "Developer" mean the Developer under the DDA and its permitted successors and assigns; references to "Attachments" mean the Attachments to the DDA unless otherwise specified. This Attachment is intended to set forth critical milestones and times for performance in the pre-development and development of the Project. In the event of any conflict between the terms and provisions of this Attachment and the DDA, the DDA shall control.

Whenever this Schedule of Performance requires the submission of plans or other documents at a specified time, such plans or other documents, as submitted shall be complete and adequate for review by the Successor Agency within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with Successor Agency staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

1. <u>City Delivery of DDA.</u> City delivery of executed amended DDA to Developer.	Within thirty (30) days of State Department of Finance approval.
2. <u>Application of Building Permit.</u> Developer shall submit an application for a Building Permit for the foundation and superstructure of the Project, or any applicable phase thereof, with all building plans required for review by the City's Building Division.	Upon the approval of the entitlements actively being pursued for the Project as defined in this amended Agreement and prior to the expiration of the entitlements, as such expiration may be extended.
3. <u>Construction Impact and Mitigation Plan.</u> Developer submittal of a Construction Impact and Mitigation Plan for review and approval by Successor Agency staff.	Within thirty (30) days of submission of Building Permit Application to the City's Building Division.
4. <u>Developer Receipt of Building Permit.</u> Developer shall have received a Building Permit for the foundation and superstructure from the City's Building Division.	Within three hundred (300) days of submission of Building Permit Application to the City's Building Division.
5. <u>Developer Evidence of Financing.</u> The Developer shall submit evidence that all lender contingencies have been removed from Lender's binding financing commitment for the Project.	Within three hundred (300) days of submission of Building Permit Application to the City's Building Division.

6. <u>Developer Execution of Certain Documents.</u> Developer shall sign all loan and security documents necessary to carry out the intent of this Agreement, and all documents necessary to close the construction loan for the Project, as well as any deed restrictions that will run with the land.	Within three hundred (300) days of submission of Building Permit Application to the City's Building Division.
7. <u>Building Construction.</u> Developer to commence building construction.	Not later than sixty (60) days after issuance of a Building Permit and immediately upon completion of grading, excavation and foundation work.
8. <u>Substantial Completion (Temporary Certificate of Occupancy).</u> Developer to achieve completion of construction of the Project in accordance with the Certificate of Compliance, which will then be issued by the Successor Agency.	Within 5 years of construction commencement.

ATTACHMENT NO. 7A

INTENTIONALLY OMITTED

DRAFT

ATTACHMENT NO. 8

INTENTIONALLY OMITTED

DRAFT

ATTACHMENT NO. 9
METHOD OF FINANCING
PLAZA DE ALMADEN OFFICE COMPLEX

NOTE: References herein to "this Agreement" and "the DDA" mean the Disposition and Development Agreement of which this Attachment No. 9 is a part. Capitalized terms not otherwise defined herein shall have the meaning set forth in the DDA. References to the "Developer" mean the Developer under the DDA and its permitted successors and assigns; references to "Attachments" mean the Attachments to the DDA unless otherwise specified. In the event of any conflict between the terms and provisions of this Attachment and the DDA, the DDA shall control.

I. PROJECT FINANCING SUMMARY

Financing of the Project is to generally consist of:

- (a) Successor Agency Parcels, as more fully described in Section II, Subsection A below;
- (b) Developer Parcels, as more fully described in Section II, Subsection B below; and
- (c) Developer Project Funding, as more fully described in Section II, Subsection C below;

II. FUNDING PLAN

A. The Site

The Developer now owns all parcels that comprise the Project Site. The Site is described in Attachment 2 to the DDA.

C. Developer Funding

The Developer is responsible for funding 100% of the project costs for work described in the Scope of Development. The Developer may use any combination of debt and equity to fund the Project and must present evidence, for the approval of the Executive Officer of the Successor Agency, that all funding for the Project is in place and fully committed at least sixty (60) days prior to commencement of construction.

III. NO COST TO SUCCESSOR AGENCY

It is understood that all Project improvements shall be at the sole cost and expense of the Developer, including but not limited to any environmental clean-up and/or monitoring as may be necessary for the development of the Site.

DRAFT

ATTACHMENT NO. 12

INSURANCE REQUIREMENTS

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 01/96) covering Commercial General Liability and Insurance Services Office Form Number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 (Ed. 01/96), including Explosion, Collapse and Underground; and
2. Insurance Services Office Form Number CA 0001 (Ed. 12/93) covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance;
4. Builder's Risk Insurance; and
5. Professional Liability Errors and Omissions Insurance.

B. Minimum Limits of Insurance

Developer shall maintain limits no less than:

1. Commercial General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Property Insurance: Full replacement cost with no coinsurance penalty provision. Business Interruption or rental income shall be in an amount equal to and not less than twelve (12) months of gross revenues from rental income.
5. Builder's Risk: Completed value of the Project.
6. Developer shall cause its professional consultants consisting of, but not limited to Architect, Structural Engineer, Civil Engineer, Mechanical Engineer, Electrical Engineer, and any other professional consultant deemed necessary by the Successor Agency's Risk Manager, to maintain Professional Errors and Omissions Liability insurance with limits as reasonably determined by the Successor Agency's Risk Manager.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the Successor Agency. At the option of the Successor Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Successor Agency, its officials, employees, agents and contractors; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Successor Agency.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages.
 - a. The Successor Agency of San Jose, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Developer; products and completed operations of the Developer; premises owned, leased or used by the Developer; automobiles owned, leased, hired or borrowed by Developer. The coverage shall contain no special limitations on the scope of protection afforded to the of San Jose, its officials, employees, agents and contractors; and
 - b. The Developer's insurance coverage shall be primary insurance as respects the Successor Agency of San Jose, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the Successor Agency of San Jose, its officials, employees, agents or contractors shall be excess of the Developer's insurance and shall not contribute with it; and

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Successor Agency of San Jose, its officials, employees, agents, or contractors; and
 - d. Coverage shall state that the Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 2. Builders' Risk policies shall contain the following provisions:
 - a. Successor Agency of San Jose shall be named as loss payee.
 - b. The insurer shall waive all rights of subrogation against the Successor Agency of San Jose.
- 3. All Coverages

Each insurance policy as required hereunder shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the Successor Agency.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to the Successor Agency's Risk Manager.

F. Verification of Coverage

Developer shall furnish the Successor Agency with certificates of insurance and with original endorsements affecting coverage as required hereunder. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Successor Agency's Risk Manager:

The Successor Agency of San Jose
Risk Manager
200 East Santa Clara Street, 2nd Floor Wing
San Jose, CA 95113-1905

G. Contractors and Subcontractors

Developer or its general contractor shall include all contractors and

subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each contractor and subcontractor.

DRAFT

ATTACHMENT NO. 13

RECORDATION REQUESTED BY:

Executive Officer of the Successor Agency of
the San Jose Redevelopment Agency
200 East Santa Clara 17th Floor Tower
San Jose, California 95113

AFTER RECORDATION RETURN TO:

Boston Properties Limited Partnership
Four Embarcadero Center
Lobby Level, Suite One
San Francisco, California 94111

PLEASE RECORD WITHOUT FEE PURSUANT
TO GOVERNMENT CODE SECTION 6103

CERTIFICATE OF COMPLIANCE

This Certificate of Compliance is made by the Successor Agency to the Redevelopment Agency of the City of San Jose, a public entity established pursuant to California Health and Safety Code Section 34177 ("Successor Agency"), in favor of BXP Almaden Associates LP, a Delaware limited partnership ("Developer") as of the date set forth below.

This Certificate of Compliance is not a notice of completion pursuant to Section 3093 of the California Civil Code.

Recitals

- A. The Successor Agency and the Developer entered into that certain Amended and Restated Disposition and Development Agreement dated _____, 2021 (the "Agreement"), concerning the development of certain real property situated in the Successor Agency of San Jose, California as more fully described on EXHIBIT A, attached hereto and made a part hereof. Capitalized terms used herein shall have the same meanings ascribed to them in the Agreement.
- B. As referenced in Section 316 of the Agreement, the Successor Agency is required to issue to the Developer a Certificate of Compliance upon completion of the Project (as defined in the Agreement), which Certificate of Compliance is required to be in such form as to permit it to be recorded in the Recorder's Office of Santa Clara County.
- C. The Successor Agency has determined that the Developer has met the conditions for issuance of the Certificate of Compliance as set forth in Section 320 of the Agreement for the Project as defined on _____.

NOW, THEREFORE, the Successor Agency hereby certifies as follows:

1. The Developer has completed the development of the Project and has complied with all of Developer's obligations, and other covenants under the Agreement which relate to the design and construction of the Project.

2. Issuance of this Certificate of Compliance shall not in any way modify any obligations of the Developer or any successor or assign remaining under the Agreement or under the Declaration of Covenants and Restrictions Affecting Real Property, the latter of which has been recorded in the Recorder's Office of Santa Clara County.

IN WITNESS WHEREOF, the Successor Agency has executed this Certificate of Compliance this _____ day of _____, 20__.

Approved as to form
REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

THE SUCCESSOR AGENCY TO THE

City Attorney

By: _____

Successor Agency
Executive Officer

ACKNOWLEDGEMENT

State of California
County of _____

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

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

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

WITNESS my hand and official seal

Signature _____ (Seal)

EXHIBIT A

Property Description

[to be provided]

DRAFT