

California Government Code Section 65868.5

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65868.5. No later than 10 days after a city, county, or city and county enters into a development agreement, the clerk of the legislative body shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

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9.4 Priority of Mortgages. For purposes of exercising any remedy of a Mortgagee pursuant to this Article IX, or for becoming a Transferee in the manner specified in Article X below, the applicable Laws of the State of California shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

ARTICLE X

TRANSFERS AND ASSIGNMENTS; DEVELOPER CURE RIGHTS, ALLOCATION OF DEVELOPER RIGHTS, DUTIES AND OBLIGATIONS

10.1 Limitations on Developer's Right to Transfer. Developer acknowledges that the qualifications of Developer are of particular importance to City for, among others, the following reasons: (i) the importance of development of the Project Site to the surrounding area and the Broadway/MacArthur/San Pablo Redevelopment Area, and to the general welfare of City, with particular reference to City's objectives as reflected in the General Plan and the Broadway/MacArthur/San Pablo Area Redevelopment Plan (as applicable); (ii) City's reliance upon the qualifications and ability of Developer to serve as the catalyst for development of the Project and to assure the quality of the use, operation and maintenance in the development of the Project; and that such qualifications and identity are material considerations inducing City to enter into this Agreement with Developer. In recognition of these factors, other than as expressly provided for in this Agreement, Developer may not sell, convey, assign, Transfer, alienate or otherwise dispose of all or any of its interest or rights in this Agreement without in each instance obtaining the prior written approval of City in accordance with this Article X. Approval of any one Transfer will not waive City's right to require such approval for each and every Transfer. No Transfer shall be valid unless it is done for a legitimate business purpose and

not to deprive City of any of the benefits under this Agreement. Developer shall reimburse City for its reasonable costs of reviewing a proposed Transfer. Developer's rights to Transfer any right or interest under this Agreement shall be governed strictly in accordance with the provisions of this Article X, and no voluntary or involuntary successor-in-interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth in this Article X. City shall not unreasonably withhold or delay consideration or approval of a proposed Transfer, and may only deny a proposed Transfer for the proposed Transferee's failure to satisfy the criteria and elements set forth in this Article X.

10.2 Conditions Precedent to All Transfers. The following conditions precedent must be satisfied prior to the effectiveness of Developer's Transfer of any right or interest under this Agreement:

10.2.1 No Event of Default. No Event of Default by Developer shall be outstanding and uncured as of the effective date of the proposed Transfer, or in the event of a Transfer by Developer of its rights, duties and obligations with respect to a portion of the Project Site, no Event of Default by Developer shall be outstanding and uncured as to any development parcel included within the proposed Transfer as of the effective date of the proposed Transfer, unless City Council has received adequate assurances satisfactory to it in its sole discretion that such Event of Default shall be cured in a timely manner either by Developer or the Transferee under the Transfer. Notwithstanding the foregoing to the contrary, the condition precedent set forth in this Section 10.2.1 shall not apply to Mortgagee Transferees.

10.2.2 Assumption Agreement. Developer or Transferee shall have delivered to City an Assumption Agreement, the form of which shall be subject to the City staff's prior approval. In the case of a Non-Exempt Transferee, such Assumption Agreement shall be