

SETTLEMENT AGREEMENT

DATED AS OF AUGUST 13, 2009

BETWEEN

CITY AND COUNTY OF SAN FRANCISCO

AND

MIRANT POTRERO, LLC

LIST OF EXHIBITS

Exhibit A	Legal Description of the Site
Exhibit B	Map of the Site
Exhibit C	Area Map of the Site
Exhibit D	Form of Owner Support Letter
Exhibit E	Form of City Support Letter
Exhibit F	Form of Assumption of Obligations Agreement
Exhibit G	Form of Stipulated Injunction for UMB Lawsuit, Station A Buildings
Exhibit H	Form of Memorandum of Agreement
Exhibit I	Form of Fossil Fuel Deed Restriction

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "**Agreement**") dated for convenience of reference purposes only as of August 13, 2009, is between the **City and County of San Francisco**, a charter city and county (the "**City**") and **Mirant Potrero, LLC**, a Delaware limited liability company (the "**Owner**"). The City and the Owner are sometimes referred to in this Agreement collectively as the "**Parties**" and individually as a "**Party**." Unless otherwise defined in this Agreement, initially capitalized terms used in this Agreement shall have the meaning given them in Article 1 below.

The City and the Owner are entering into this Agreement to resolve longstanding disputes between them regarding the Potrero Power Plant, including, most recently, disputes about the Owner's application to renew its Existing Water Discharge Permit for Unit 3 and the City's UMB Lawsuit. This Agreement, if and when it becomes effective according to its terms, provides for, among other things: (i) the Owner's permanent Shutdown of the Potrero Power Plant as soon as it is no longer needed for electric reliability; (ii) the Owner's agreement to pay the City \$1,000,000 for certain neighborhood improvement measures and to reimburse the City Attorney \$100,000 for its costs; (iii) a process for resolving the issues regarding compliance of the Station A Buildings with the City's UMB Ordinance, including issues raised in the UMB Lawsuit; and (iv) the City's priority processing of entitlements for a proposed reuse plan for the Site, all on the terms and conditions more particularly described below.

RECITALS

THIS AGREEMENT is made with reference to the following facts and circumstances:

The Site:

A. The Owner owns real property located in the City and County of San Francisco, California, bounded generally by Illinois Street and the San Francisco Bay, between 22nd and 23rd Streets (the "**Site**"). A legal description of the Site is attached to this Agreement as Exhibit A, and a map of the Site is attached as Exhibit B, provided that in the event of any inconsistency between the map and the legal description, the legal description shall control. Also attached, as Exhibit C, is a map of the area in which the Site is located. As shown on Sectional Map ZN08 of the City's Zoning Maps, the Site is currently zoned M-2 (heavy industrial).

B. The Site has been used for industrial uses for over a century. The oldest power generation facilities comprising the Potrero Power Plant have been used for almost 50 years. The Site is contaminated with certain hazardous materials and is subject to an agreement between its earlier owner, Pacific Gas & Electric Company ("**PG&E**"), and the Owner and related deed restrictions recorded in the Official Records regarding environmental remediation responsibilities and future uses.

C. At the Site, the Owner operates facilities known as Units 3, 4, 5 and 6 (collectively the "**Units**," the "**Potrero Power Plant**" or the "**Plant**") for the purpose of generating and selling

electric power. The Potrero Power Plant is currently subject to a reliability-must-run ("RMR") contract and a Participating Generator Agreement ("**Participating Generator Agreement**") with the California Independent System Operator ("ISO") to help provide electric reliability for San Francisco.

Disputes Between the Owner and the City Related to the Potrero Power Plant and the Site:

D. During the last decade, the City and the Owner have had a number of disputes related to the operation of the Potrero Power Plant. In May 2000, the Owner applied to the California Energy Commission for a license to develop a new 540 MW electric generating unit at the Potrero Power Plant – a proposed new Unit 7. The City actively participated in the proceeding and, as reflected in San Francisco Board of Supervisors Resolution No. 458-03, formally opposed that project.

E. In June 2001, the City sued the Owner for alleged violations of the Clean Air Act in operating Potrero Power Plant Units 4, 5, and 6. The Owner denied the allegations.

F. In January 2001, the City Attorney named the Owner as a defendant in a lawsuit alleging market manipulation and price gouging in California's wholesale electricity markets. The Owner denied those allegations.

G. The disputes described in the foregoing Recitals D, E, and F have been resolved, but, as described below, the City continues to oppose the continued operation of the Potrero Power Plant.

H. The Site contains a complex of structures commonly known as the "**Station A Buildings**," including the Station A, Meter, Compressor, and Gate House buildings. The Station A Buildings are unreinforced masonry buildings ("**UMBs**") subject to the City's Unreinforced Masonry Building Ordinance, codified in San Francisco Building Code Chapters 16 B-C (the "**UMB Ordinance**"). In June 2003 and April 2005, the City's Department of Building Inspection issued Orders of Abatement related to the UMBs at the Site. Those Orders of Abatement remain outstanding.

I. The Owner proposed demolishing the Station A Buildings as part of the project description for the Unit 7 project, which was subsequently discontinued. On August 18, 2004, the Owner then submitted a stand-alone application for the demolition of Station A to comply with the UMB Ordinance. The City's Planning Department began the environmental review process for the stand-alone demolition process in October 2005, but the Owner asked the City to suspend that environmental review process in August 2006 pending consideration of the Trans Bay Cable project, which included the potential demolition of the Station A Buildings to construct a converter station at the City terminus of the Trans Bay Cable. The Trans Bay Cable project ultimately did not include the demolition of Station A in its project description, and in March 2007 the Owner sent a letter, as well as a project description, to the Planning Department asking to resume the environmental review process for a stand-alone demolition project. In an August 25, 2008 letter, the Planning Department stated that "San Francisco typically does not allow applications for

demolition absent a replacement project." The Parties agree that any Site Plan contemplated by this Agreement (including the Stipulated Injunction), if approved by the City, would constitute a replacement project for purposes of conducting environmental review under CEQA on the disposition of the Station A Buildings.

J. On April 27, 2009, the City and the People of the State of California ("**Plaintiffs**"), by and through the City Attorney, filed a lawsuit against the Owner in San Francisco Superior Court (Case No. CGC-09-487795), seeking injunctive and other relief for violation of the City's UMB Ordinance. On May 22, 2009, the City filed an amendment to its complaint. On June 22, 2009, the Owner filed its answer to the City's amended complaint, together with a cross-complaint against the City. Such lawsuit and all filings made in connection with such lawsuit are referred to in this Agreement as the "**UMB Lawsuit**." On June 19, 2009, the Owner submitted to the City's Planning Department an environmental review application to demolish the Station A Buildings.

K. In 2001, the San Francisco Board of Supervisors adopted Ordinance No. 124-01, requiring the City to develop an energy plan that would consider all feasible alternatives to fossil fueled resources. In December 2002, the Board of Supervisors adopted Resolution No. 827-02, endorsing an Electricity Resource Plan (the "**Electricity Resource Plan**"), which provides for closure of the older fossil fuel power plants in San Francisco and their replacement with a combination of energy efficiency, renewable energy, clean distributed generation, transmission upgrades, and cleaner, more reliable and flexible fossil-fueled resources. The Electricity Resource Plan identifies eight policy goals that the City developed through public comment and used to guide the Plan. Those goals are to: maximize energy efficiency, develop renewable power, assure reliable power, support affordable electric bills, improve air quality and prevent other environmental impacts, support environmental justice, promote opportunities for economic development, and increase local control over energy resources.

L. In furtherance of its Electricity Resource Plan, the City has made it a policy priority to close the Potrero Power Plant as soon as possible. Over the years, the City has stated that commitment consistently to the Owner and the community. In Board of Supervisors Resolution No. 52-07, the City reiterated its position that the Potrero Power Plant cease operations and urged the Owner to agree to permanently close the Potrero Power Plant when the Plant is no longer needed for reliability.

M. In 2008, by Board of Supervisors Resolution No 299-08, the City restated its intention to close the Potrero Power Plant. The City again stated this intention in 2009 in Ordinance No. 94-09.

N. On May 10, 2006, the San Francisco Bay Regional Water Quality Control Board ("**RWQCB**") renewed the water discharge permit for Potrero Power Plant Unit 3 only until December 31, 2008 (the "**Existing Water Discharge Permit**"). In doing so, the RWQCB stated its intent to "prohibit the plant's discharge of once-through cooling water, to the extent allowed by law, unless [Mirant] demonstrates that its discharge has no significant adverse environmental effects on San Francisco Bay." The RWQCB further stated its intent "to resolve this issue no later than December 31, 2008." On July 1, 2008, the Owner filed an application to renew the Existing

Water Discharge Permit. The Owner currently operates Unit 3 subject to an administrative extension of the Existing Water Discharge Permit, pending review of its renewal application.

O. In Board of Supervisors Resolution Nos. 465-08, 254-06, and 84-05, the City has stated its opposition to the use of once-through cooling at the Potrero Power Plant. The City has urged the State Water Resources Control Board and the RWQCB to terminate the use of once-through cooling at the Potrero Power Plant as soon as possible. The City, including the City Attorney, has indicated its intention to take all appropriate legal action to stop the use of once-through cooling at the Potrero Power Plant.

P. In a December 12, 2008 letter to the RWQCB signed by the City Attorney, Supervisor Sophie Maxwell, and then-Board of Supervisors President Aaron Peskin, the City again urged the RWQCB to reject the Owner's permit application, asked the RWQCB to convene a stakeholder meeting to receive public input regarding the permitting process for the Potrero Power Plant, and stated that "the City intends to take all appropriate legal action to protect the Bay and the public." In a December 18, 2008 letter to the Owner, the City Attorney "reserve[d] the right to take all appropriate legal action on behalf of the City in view of the City's interests in protecting the Bay and the public, and to oppose [the Owner's] continued operation of the Potrero Power Plant under the [Existing Water Discharge Permit] that is expiring and the [RWQCB's] issuance of a permit extension." In an April 3, 2009 letter to the State Water Resources Control Board and the RWQCB signed by the City Attorney, Supervisor Maxwell, and Board of Supervisors President David Chiu, the City urged the water boards to reject the Owner's application for a permit renewal, stating that "State law provides a strong basis for the Regional Board to move forward now with its permitting responsibilities in a way that protects the bay."

Q. The ISO's 2004 Action Plan for San Francisco identifies electric system improvements that would allow for closure of in-City electric generation, including the Potrero Power Plant.

R. Since the ISO's adoption of the Action Plan in 2004, there have been extensive upgrades to the transmission system in and around the City that have significantly reduced or eliminated the need for in-City electric generation to maintain reliability. In June 2008 the ISO indicated in a letter to the City that Potrero Unit 3 would not be required to operate for reliability after completion of the Trans Bay Cable. Studies undertaken by PG&E in 2008 indicate that when the Martin-Hunters Point 115kV transmission project is placed in service in April 2009, only 96 megawatts of electric generation will be required in San Francisco even before completion of the Trans Bay Cable. Based on this study, the requirement for 96 megawatts of generation could be met without the continued operation of Potrero Unit 3.

S. The ISO prepared a technical study in April 2009 that indicates a need for 25 megawatts of in-City electric generation after completion of the Trans Bay Cable. Studies conducted by PG&E and the City indicate that there are several low-cost, easy-to-implement alternatives that will eliminate this modest need. Accordingly, the Parties assume for the purposes of this Agreement that it is achievable for all of the Units to be released from electric reliability requirements by the ISO and permanently Shut Down by December 31, 2010 (the "Assumed ISO Release Date").

T. The Parties anticipate that the Shutdown of the Potrero Power Plant will not create any need for additional electric generation in San Francisco, because electricity needs will be met by electricity infrastructure improvements that have recently been implemented, are underway, or have recently been approved.

Resolution of Disputes:

U. The Owner has indicated its willingness to permanently Shut Down the Potrero Power Plant as soon as the ISO determines it is no longer needed for electric reliability. The Parties consider the Shutdown of the Potrero Power Plant as envisioned by this Agreement to be in their mutual best interests.

V. The Owner has stated its interest in proposing an alternative land use plan for the Site and in entering into an agreement with the City for (1) the permanent Shutdown of the entire Potrero Power Plant when it is no longer needed for reliability, including specifying certain activities to be undertaken post-Shutdown as described in Section 3.1(c), and (2) the redevelopment of the Site following such Shutdown, if the City is willing to agree to priority processing of a proposed land use plan for the development and/or reuse of the Site (the "Site Plan") and all City entitlements required for the redevelopment of the Site, subject to environmental review under the California Environmental Quality Act, California Public Resources Code Sections 21000 *et seq.*, and the regulations adopted by the City implementing such law (collectively, "CEQA"), and all consistent with the terms and principles set forth below. In that regard, the Parties acknowledge that the possible creation of additional land value for the Site through the entitlement process is a material inducement for the Owner to agree to permanently Shut Down the Potrero Power Plant under this Agreement.

W. Neither the Owner nor the City has any specific plan for reuse or interim use of the Property after Shutdown of the Potrero Power Plant. The existing deed restrictions prohibit use of the Property for lodging, hospital or health-care facilities, schools, day care centers, parks, playgrounds or other recreational uses, and any use of groundwater for any domestic or similar purpose. Subject to such existing deed restrictions and to the Fossil Fuel Restriction required by this Agreement, the timing and level of remediation, including remediation associated with any demolition or cleanup activities, will depend on the specifics of any reuse plan for the Site that may be proposed in the future. The City will perform full environmental review under CEQA before considering approval of any reuse or demolition plan for all or any portion of the Site.

X. The City and the Owner also wish to address the question of how to treat the Station A Buildings during the Term of this Agreement as part of the planning process for the entire Site, so that there can be a thorough analysis of whether to rehabilitate or demolish the buildings, as appropriate, in connection with the development and reuse of the Site. In the meantime the Owner is willing to take such precautions required by this Agreement to keep the Station A Buildings from posing a safety hazard to members of the public, employees of the Owner and visitors to the Site. Potential environmental impacts associated with the Station A Buildings will be evaluated under CEQA as part of the Site Plan environmental review process described in Article 5.

Y. The Parties now wish to fully and finally resolve their current disputes involving the operation of the Potrero Power Plant, including the Owner's application to renew its Existing Water Discharge Permit for Unit 3, and compliance of the Station A Buildings with the City's UMB Ordinance, including the UMB Lawsuit (collectively, the "**Disputes**"), without resorting to further litigation over those matters, by providing for, among other things: (i) the Owner's permanent Shutdown of the Potrero Power Plant as soon as it is no longer needed for electric reliability; (ii) the Owner's agreement to pay the City \$1,000,000 for certain neighborhood improvement measures and to reimburse the City Attorney \$100,000 for its costs; (iii) a process for resolving the issues regarding compliance of the Station A Buildings with the City's UMB Ordinance, including the UMB Lawsuit; and (iv) the City's priority processing of entitlements for a proposed reuse plan for the Site, all on the terms and conditions more particularly described below.

AGREEMENT

ACCORDINGLY, to settle the UMB Lawsuit and avoid the risks and costs of any further litigation, and in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the City and the Owner agree to the following terms and conditions as a complete and final resolution of the Disputes between them:

ARTICLE 1

DEFINITIONS

1.1 Definitions

(a) "**Affiliate**" means, with respect to a Person, any Person that directly or indirectly Controls, is Controlled by or is under Common Control with that Person.

(b) "**Agreement**" shall have the meaning set forth in the opening paragraph of this Agreement.

(c) "**Assumed ISO Release Date**" shall have the meaning set forth in Recital S.

(d) "**Assumption of Obligations**" shall mean the agreement in recordable form attached as Exhibit F.

(e) "**Attorneys' Fees and Costs**" means any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

(f) "**CEQA**" shall have the meaning set forth in Recital V.

(g) **"City"** shall have the meaning set forth in the opening paragraph of this Agreement.

(h) **"City Costs"** shall mean any and all City costs in connection with the Site Plan other than City Fees.

(i) **"City Fees"** means generally applicable fees and costs that, now or in the future, are payable by the Owner to the City under any site, building or development permit application or processing fee set forth in the City's Municipal Code, including the costs of environmental review under CEQA to the extent applicable. As used in the preceding sentence, a City Fee is generally applicable if it applies to private property within any designated use classification or use district of the City, so long as such classification or district includes all private property that receives general or special benefits of, or causes the burdens that occasion the need for, such fee.

(j) **"City Support Letter"** shall have the meaning set forth in Section 3.4(b)(i).

(k) **"Control"** means the power to direct the affairs or management of another Person, whether by contract, operation of law or otherwise. **"Controlled by"** and **"Controlling"** have correlative meanings. **"Common Control"** means that two Persons are both Controlled by the same other Person.

(l) **"Court"** means the San Francisco Superior Court or other court with jurisdiction over the UMB Lawsuit.

(m) **"DOE"** shall have the meaning set forth in Section 3.1(a)(iii).

(n) **"Disputes"** shall have the meaning set forth in Recital Y.

(o) **"Effective Date"** shall have the meaning set forth in Section 2.3(b).

(p) **"Electric Reliability Removal Conditions"** means, for one or more Units of the Plant, that:

- (i) The Owner (A) has received written notice from the ISO that such Unit or Units at the Plant are not needed to ensure electric reliability and are no longer designated as RMR units or subject to RMR or successor contracts established by the ISO, (B) has not received an order from a federal, state or local governmental agency or authority with jurisdiction requiring the Owner to continue operating a Unit or Units at the Plant, and (C) has received approval, if required, of the Shutdown from the FERC; and
- (ii) There is no Event of Default by the City of its obligations under this Agreement.

(q) **"Electricity Resource Plan"** shall have the meaning set forth in Recital K.

(r) **"Entitlement Schedule"** shall have the meaning set forth in Section 5.4.

- (s) **"Event of Default"** shall have the meaning set forth in Article 6.
- (t) **"Excluded Transfer"** shall mean:
 - (i) any Transfer to an Affiliate of Owner;
 - (ii) any Transfer of an interest in a portion of the Site, such as an easement, that would not allow the Transferee to use that portion of the Site to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels; and
 - (iii) any condemnation or exercise of eminent domain authority, whether whole or partial, by a governmental authority or other entity with statutory authority under state law to exercise eminent domain authority.
- (u) **"Existing Deed of Trust"** means the deed of trust securing the Existing Secured Loan and encumbering the Site, recorded on January 6, 2006, as Instrument No. 2006-1-106545-00 in the Official Records.
- (v) **"Existing Secured Loan"** means the term loan and revolving credit facility under the Credit Agreement, dated as of January 3, 2006, as amended or modified from time to time, among Mirant North America, LLC, as borrower, the several banks and other financial institutions or entities from time to time parties to the Credit Agreement, Deutsche Bank Securities Inc. and Goldman Sachs Credit Partners L.P., as co-syndication agents, and JPMorgan Chase Bank, N.A., as administrative agent, and guaranteed by certain subsidiaries of Mirant North America, including the Owner, which loan is secured by Existing Deed of Trust.
- (w) **"Existing Secured Loan Parties"** means the several banks and other financial institutions or entities that are from time to time parties to the Existing Secured Loan, Deutsche Bank Securities Inc. and Goldman Sachs Credit Partners L.P., as co-syndication agents, and JPMorgan Chase Bank, N.A., as administrative agent and collateral agent, and any of their successors and assigns, including any Person receiving an interest in the Site or the member interests of the Owner from any of the foregoing as a result of their exercise of any of their rights or remedies under the Existing Secured Loan.
- (x) **"Existing Water Discharge Permit"** shall have the meaning set forth in Recital N.
- (y) **"FERC"** means the Federal Energy Regulatory Commission or any successor.
- (z) **"Final Shutdown Date"** means the earlier of (i) the date on which all of the Units have been Shut Down under the Accelerated Shutdown provisions set forth in Section 3.1(b), or (ii) midnight on December 31 of the same calendar year in which the Owner has met the Electric Reliability Removal Conditions for all of the Units.
- (aa) **"Fossil Fuel Restriction"** shall have the meaning set forth in Section 3.5.

(bb) **"Indemnified Parties"** means the City (including, but not limited to, all of its respective boards, commissions, departments, agencies and other subdivisions), the Redevelopment Agency (to the extent the Site Plan or the planning process involves the Redevelopment Agency), all Agents of the City and the Redevelopment Agency, and their respective heirs, legal representatives, successors and assigns, and each of them.

(cc) **"Indemnify"** means indemnify, protect, defend and hold harmless.

(dd) **"ISO"** means the California Independent System Operator as described in Recital C, or any successor.

(ee) **"Laws"** shall mean all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, whether or not in the contemplation of the Parties, that may affect or be applicable to the Site or any part of the Site (including, without limitation, any subsurface area), or the use of the Site and the buildings and improvements on or affixed to the Site, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, and their departments, bureaus, agencies or commissions, authorities, board of officers, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Site, and similarly the term **"Law"** shall be construed to mean the same as the above in the singular as well as the plural.

(ff) **"Loss" or "Losses"** when used with reference to any indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages to the extent arising from third party claims), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

(gg) **"Memorandum of Agreement"** shall have the meaning set forth in Section 2.2(a) of this Agreement.

(hh) **"Mirant Corporation"** means Mirant Corporation, the parent publicly traded corporation that indirectly Controls Mirant Potrero.

(ii) **"Mirant North America"** means Mirant North America, LLC, an Affiliate of Mirant Corporation, and its successors and assigns.

(jj) **"Mirant Potrero"** means Mirant Potrero LLC, the Owner as of the date of this Agreement.

(kk) **"Official Records"** means the official records of the City and County of San Francisco, California.

(ll) **"Owner"** shall have the meaning set forth in the opening paragraph of this Agreement.

(mm) **"Owner Support Letter"** shall have the meaning set forth in Section 3.4(a)(i).

(nn) **"Participating Generator Agreement"** shall have the meaning set forth in Recital C.

(oo) **"Party"** or **"Parties"** shall have the meanings set forth in the opening paragraph of this Agreement.

(pp) **"Person"** means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or other federal, state or local governmental entity.

(qq) **"PG&E"** shall have the meaning set forth in Recital B.

(rr) **"Plaintiffs"** shall have the meaning set forth in Recital J.

(ss) **"Plant"** shall have the meaning set forth in Recital C.

(tt) **"Potrero Power Plant"** shall have the meaning set forth in Recital C.

(uu) **"Project Permit"** shall have the meaning set forth in Exhibit G.

(vv) **"Redevelopment Agency"** means the Redevelopment Agency of the City or any successor.

(ww) **"RMR"** shall have the meaning set forth in Recital C.

(xx) **"RWQCB"** shall have the meaning set forth in Recital N.

(yy) **"Shut Down" or "Shutdown"** means the permanent and irrevocable cessation of electricity generation operations at the Potrero Power Plant in accordance with all applicable laws and regulations, such that the Potrero Power Plant may no longer be used to generate electricity on any basis (including, but not limited to, any reliability-must-run or other intermittent or emergency basis) or emit any hazardous materials in conjunction with the operation of any electrical generation facilities comprising the Potrero Power Plant. For purposes of this Agreement, "Shutdown" does not include any significant hazardous materials remediation activities on the Site.

(zz) **"Shutdown Obligation"** means the obligation of the Owner to Shut Down the Potrero Power Plant set forth in Section 3.1(a)(i).

(aaa) **"Site"** shall have the meaning set forth in Recital A.

(bbb) **"Site Plan"** shall have the meaning set forth in Recital V.

(ccc) **"Station A Buildings"** shall have the meaning set forth in Recital H.

(ddd) **"Stipulated Injunction"** means the stipulated injunction in the form attached to the Agreement as Exhibit G, with such changes as the Parties may agree to as provided in Section 4.1(a)(iii).

(eee) **"Term"** shall have the meaning set forth in Section 2.1.

(fff) **"Termination Date"** shall have the meaning set forth in Section 2.1.

(ggg) **"Transfer"** means sell, convey, assign, transfer, alienate or otherwise dispose of (directly or indirectly, by one or more transactions, and by operation of law or otherwise) (i) all or any material part of the ownership interest or rights in the Site and/or this Agreement, or (ii) all or a Controlling portion of the member interests in the Owner. By way of example only and not by way of limitation, and subject to the provisions of Section 2.2, "Transfer" shall include any transaction that would be encompassed within a typical due on sale or encumbrance provision in a commercial mortgage loan.

Notwithstanding the generality of the foregoing, however, "Transfer" shall exclude (i) an Excluded Transfer and (ii) any sale, conveyance, assignment, transfer, alienation or other disposition of an ownership interest in an Affiliate of Owner having Control over Owner.

(hhh) **"Transferee"** means a Person to whom a Transfer is made.

(iii) **"UMB Lawsuit"** shall have the meaning set forth in Recital J.

(jjj) **"UMB Ordinance"** shall have the meaning set forth in Recital H.

(kkk) **"UMBs"** shall have the meaning set forth in Recital H.

(lll) **"Unified Program Agency"** means the City's Department of Public Health, acting in its regulatory capacity under state and local laws in issuing permits or authorizations under local ordinances or regulations relating to the generation or handling of hazardous waste or hazardous materials, as those terms are defined in the relevant law.

(mmm) **"Unit" or "Units"** shall have the meaning set forth in Recital C.

ARTICLE 2

GENERAL TERMS

2.1 Term of Agreement

The term of this Agreement (the **"Term"**) shall commence on the Effective Date (as defined in Section 2.3(b)) and end twelve (12) years from the Effective Date (the **"Termination Date"**), unless sooner terminated in accordance with the terms and conditions of this Agreement.

2.2 Covenants Running with the Land

(a) **Recordation of Memorandum of Agreement.** The Parties agree to execute, acknowledge, and cause a memorandum of this Agreement substantially in the form attached to this Agreement as Exhibit H (the **"Memorandum of Agreement"**) to be recorded in the Official Records as soon as possible following the Effective Date.

(b) **Binding on Successors; Limited Exception for Existing Secured Loan Parties.**

(i) Upon recordation of the Memorandum of Agreement as provided in Section 2.2(a) above, this Agreement shall constitute covenants running with the Site binding on all successors and assigns of the Owner; provided, however, this Agreement, including the covenants on the part of the Owner, shall not be binding on the Existing Secured Loan Parties or any of their successors or assigns, except only as otherwise provided in this Section 2.2(b).

(ii) In the event that any Existing Secured Loan Party exercises remedies under the Existing Secured Loan, and takes ownership or possession of the Site, such party shall have the right, upon written notice to the City and execution and delivery to the City by such party of the Assumption of Obligations within sixty (60) days of taking ownership or possession of the Site, to assume all of the Owner's obligations and rights under this Agreement, in which case the Agreement shall stay in effect and such party shall be deemed a beneficiary of this Agreement. In the event that such party fails to execute and deliver to the City within sixty (60) days of taking ownership or possession of the Site the Assumption of Obligations assuming all of the Owner's obligations and rights under the Agreement, this Agreement shall automatically terminate and neither Party shall then have any further rights or obligations under this Agreement other than the rights and obligations of the Owner (or any Transferee permitted under this Agreement) and the City that survive any such termination under Section 11.22, except that in such event the Existing Secured Loan Parties or any of their successors or assigns shall not be obligated to assume any duties of the Owner under this Agreement or any obligations of the Owner that survive termination of this Agreement.

(iii) Notwithstanding the foregoing, the Parties understand and agree that in the event of a refinancing of the Existing Secured Loan that provides for full repayment, the Owner shall ensure – supported by written evidence reasonably satisfactory to the City – that this Agreement has priority over the deed of trust securing the refinanced loan and, accordingly, that this Agreement shall be binding on all successors and assigns of the Owner without exception.

(iv) In the event that the term of the Existing Secured Loan is extended beyond July 3, 2013 (i.e., beyond the date that is six (6) months after the current maturity date of the Existing Secured Loan), without the Existing Secured Loan Parties first consenting in writing to be bound by this Agreement and providing for this Agreement to be prior to the Existing Secured Loan or other security instrument, then the City may terminate this Agreement upon twenty (20) days written notice to the Owner unless within such twenty (20) day period the City receives the written consent of the Existing Secured Loan Parties to be bound by this Agreement and to recognize the priority of this Agreement, which written consent shall be in form and substance reasonably satisfactory to the City.

(v) The Owner shall promptly notify the City in writing if the Existing Secured Loan is amended to extend the maturity date, or if the Existing Secured Loan is refinanced. Also, the Owner shall promptly provide the City with a copy of: (1) any notice Mirant North America or the Owner receives of acceleration of the amount owed under the Existing Secured Loan delivered by any Existing Secured Loan Party; (2) any foreclosure sale relating to the Site under the Existing Secured Loan; and (3) any deed in lieu of foreclosure

relating to the Site that Mirant North America or the Owner may execute in connection with the Existing Secured Loan.

(c) **Termination of Agreement.** Upon any termination of this Agreement, the City shall, at the Owner's written request, execute a notice of termination of the Agreement to be recorded in the Official Records, and this obligation of the City shall survive any such termination of this Agreement.

2.3 Agreement Approvals and Effective Date

(a) **Owner Approval.** The Owner has obtained all required approvals for it to enter into this Agreement.

(b) **City Approval.** Once the Owner has signed and delivered this Agreement to the City, the City shall timely submit this Agreement to the Board of Supervisors for approval. Notwithstanding anything in this Agreement to the contrary, the Owner understands and agrees that no officer or employee of the City has authority to bind the City to this Agreement unless and until the Board of Supervisors shall have duly enacted an ordinance in its sole and absolute discretion approving this Agreement, consistent with any applicable environmental review requirements under CEQA, and such ordinance has further been approved by the City's Mayor in his sole and absolute discretion or otherwise becomes effective without the Mayor's approval. Therefore, any obligations of the Parties under this Agreement are contingent upon such approvals, and this Agreement shall not be effective unless and until such approvals are obtained in accordance with the City's Charter. If a Board of Supervisors ordinance approving this Agreement becomes effective, then the effective date of this Agreement (the "**Effective Date**") shall be the same date that such ordinance becomes effective. Notwithstanding the foregoing, if an ordinance approving this Agreement does not become effective by November 30, 2009, then this Agreement shall terminate and shall be of no force and effect unless the City acting through the City Attorney, and the Owner, in their respective sole discretion, agree in writing to extend such date and such an ordinance is duly enacted and becomes effective on or before such extended date.

2.4 Payment of City Costs

Within five (5) business days after entry of the Stipulated Injunction (without a modification that is unacceptable to either Party as provided in Section 4.1(a)(iii) below), the Owner shall pay to the City, in care of the City Attorney's Office, immediately available funds in the amount of one hundred thousand dollars (\$100,000), representing payment to the City for fees incurred by the City Attorney's Office relating to the UMB Lawsuit and this Agreement. This one hundred thousand dollars (\$100,000) payment shall be non-refundable by the City to the Owner, under all circumstances.

2.5 Neighborhood Improvement Measures

Within five (5) business days after entry of the Stipulated Injunction (without a modification that is unacceptable to either Party as provided in Section 4.1(a)(iii) below), the Owner shall pay to the City, in cash or other immediately available funds, the sum of one million dollars (\$1,000,000) in partial consideration of the resolution of the Disputes under this Agreement. The City shall hold such funds in a separate account and use them, at such times and

in such manner as the City shall determine in its sole discretion, to pay for all or part of the costs of neighborhood improvement measures for the City's southeast communities, including: (i) tree planting; (ii) pediatric asthma education and remediation programs; and (iii) street and neighborhood playground cleaning. All expenditures of funds paid to the City under this Agreement shall be subject to applicable City law, including compliance with CEQA before appropriation of funds for or approval of a particular project. This one million dollars (\$1,000,000) payment shall be non-refundable by the City to the Owner, under all circumstances.

ARTICLE 3

POWER PLANT SHUTDOWN PROCESS

3.1 Agreement to Permanently Shut Down the Potrero Power Plant

(a) Shutdown Obligation.

(i) If the Electric Reliability Removal Conditions have been met for a Unit or Units, the Owner shall Shut Down such Unit or Units on the earlier of (x) the date prescribed under the Accelerated Shutdown provisions of Section 3.1(b), below, or (y) midnight December 31st of the calendar year in which the Electric Reliability Removal Conditions have been met for such Unit or Units. The Owner shall permanently and irrevocably Shut Down the Potrero Power Plant by midnight on the Final Shutdown Date (the "**Shutdown Obligation**").

(ii) The Electric Reliability Removal Conditions are solely for the benefit of the Owner. If some, but not all, of the Electric Reliability Removal Conditions are not satisfied for reasons other than an Event of Default by the Owner, then the Owner, in its sole and absolute discretion, may upon not less than ten (10) days' written notice to the City describing in reasonable detail the unsatisfied condition(s) either: (x) subject to its obligations under Sections 3.2, 3.3, 3.4, and 3.6 which shall continue, suspend performance of its obligation to Shut Down the applicable Unit or the Potrero Power Plant only until such condition is satisfied, or (y) waive the satisfaction of such conditions as the Owner may set forth in its sole and absolute discretion in a written notice to the City.

(iii) Notwithstanding anything in this Agreement to the contrary, if the United States Department of Energy ("**DOE**") or other entity having jurisdiction over the Owner or the Potrero Power Plant orders any Unit or Units to continue to operate past the date on which the Electric Reliability Removal Conditions have been satisfied (including the Final Shutdown Date), then the Owner shall be permitted to operate the applicable Unit or Units in accordance with the order. Nothing in this subsection (iii) shall relieve either Party from its support obligations under Section 3.4 or prevent either Party from challenging the effectiveness or legality of such order, provided, however, each Party shall provide the other Party copies of any such order and any legal challenges to such order. In the event Owner receives an order under this Section 3.1(a)(iii), the Owner and

City shall comply with Section 3.4 until such time as the Unit or Units is/are released from such order.

(b) **Accelerated Shutdown.** The City may, upon notice to the Owner, request the ISO to establish or approve a process to provide for the accelerated Shutdown of a Unit or Units when the Electric Reliability Removal Conditions have been met for such Unit or Units, whereby the Shutdown would occur in advance of the end of the calendar year in which the Owner has been notified that the Unit or Units is/are no longer needed for reliability. The Owner shall not be required under this Agreement to support, and may oppose, any such request by the City, and if the City does make such a request, the Owner reserves the right to seek to recover its costs associated with any such accelerated Shutdown. If the ISO establishes or approves a process for accelerated Shutdown, and such process is approved by a final order of the FERC, then the Owner shall implement the process as soon as the Electric Reliability Removal Conditions have been met for a Unit or Units. If such a process has not been established or approved by the ISO and approved by final order of the FERC at the time the Electric Reliability Removal Conditions for a Unit or Units have been met, then nothing in this Agreement shall prohibit the Owner from continuing to operate the Unit or Units until the end of the calendar year in which the Electric Reliability Removal Conditions have been met.

(c) **Post-Shutdown Activities.** Within ninety (90) days of the Final Shutdown Date, the Owner shall ensure that the Plant facilities and improvements are in a secure, inoperable condition and do not pose a physical or environmental safety hazard to members of the public or visitors of the Site, consistent with all applicable regulatory requirements and approvals and the Stipulated Injunction. The Owner also (i) shall seek to terminate applicable permits, including without limitation all Unified Program Agency permits, and registrations that are no longer needed after the Final Shutdown Date, (ii) shall request termination of its ISO Participating Generator Agreement and FERC market-based rate tariff, and (iii) shall take appropriate actions in support of those requests, consistent with all applicable legal requirements.

3.2 Notices Regarding Electric Reliability Removal Conditions

The Owner shall promptly provide the City with copies of any and all notices, correspondence or other documents to or from the ISO or FERC relating to the Electric Reliability Removal Conditions.

3.3 Limitation on Future Contracts; No Actions to Prolong Need for Potrero Power Plant

The Owner represents, warrants and covenants that its obligation to Shut Down the Potrero Power Plant under this Agreement shall not be limited by any outstanding contracts it has or may in the future have to operate any or all of the Units on the Site, other than a RMR or similar contract with the ISO. In furtherance of this obligation, the Owner agrees not to pursue the retrofit of Potrero Units 4, 5, and 6 described in the feasibility study presented by Supervisor Maxwell to the Board of Supervisors on July 22, 2008 in a request for hearing as Item 081033, or any similar retrofit project. The Owner further agrees not to take any actions that may prolong the need for the Potrero Power Plant to continue operating for electric reliability or any other purposes inconsistent with the terms and conditions of this Agreement; the City nonetheless

acknowledges that the Owner has the right, in its sole and absolute discretion so long as consistent with the terms and conditions of this Agreement, to continue to operate, maintain, repair, replace and improve the Potrero Power Plant, in accordance with all applicable laws, regulations, and permits, until the Final Shutdown Date.

3.4 Mutual Support for City's Shutdown Efforts and Owner's Regulatory Compliance Pending Shutdown

(a) **Owner's Support for City's Shutdown Efforts.** As long as there is not an Event of Default by the City under this Agreement, and for the period specified in subsection (c) below, the Owner agrees to support the efforts of the City to achieve the permanent Shutdown of the entire Potrero Power Plant consistent with the terms and conditions of this Agreement. Such support shall consist of:

(i) Within five (5) business days of the City's request, the Owner shall deliver a letter (the "**Owner Support Letter**") to the ISO, other governmental agencies, or third parties, in the form attached as Exhibit D;

(ii) Upon reasonable prior notice provided by the City, the Owner shall participate in a reasonable number of meetings with the ISO and FERC related to the City's Shutdown efforts, provided that the Owner's participation under this subsection 3.4(a)(ii) shall consist of verbally affirming the Owner's full support for the Shutdown of the Plant, as stated in the Owner Support Letter;

(iii) In any private meetings the Owner may have with the ISO and FERC relating to the continued operation after the Assumed ISO Released Date or Shutdown of the Potrero Power Plant, the Owner shall, when appropriate, state its support for the City's Shutdown efforts consistent with the Owner Support Letter;

(iv) If the ISO or any governmental authority with jurisdiction over the Owner's operation of the Plant (other than the FERC or the DOE as provided in subsection (v) below), purports to legally compel the Owner to continue to operate any or all of the Units beyond the Assumed ISO Release Date notwithstanding the Owner Support Letter, then the Owner shall actively contest such continued operation. This obligation shall include Mirant Potrero personnel appearing before the ISO staff, the ISO Board of Governors, and other appropriate regulatory agency forums to express their opposition to a requirement that any or all of the Units continue to operate beyond the Assumed ISO Release Date, and the Owner shall consult with the City regarding opposition to such requirement. In addition, the Owner shall provide the City a copy of its correspondence with the ISO staff, the ISO Board of Governors, and other governmental regulatory authorities or public utilities regarding the need for continued operation of the Potrero Power Plant after the Assumed ISO Release Date.

(v) If the FERC or DOE purports to legally compel the Owner to continue to operate any or all of the Units beyond the Assumed ISO Release Date notwithstanding the Owner Support Letter, and the City files opposition to such

continued operation at the FERC or DOE, then the Owner shall cooperate with the City in contesting such continued operation by making filings at the FERC or the DOE, at the City's request, consistent with the Owner Support Letter.

(vi) By September 1, 2010, the Owner shall submit to the ISO a written notice of intent to retire the Potrero Power Plant as of December 31, 2010; and

(vii) Within five (5) business days after entry of the Stipulated Injunction (without a modification that is unacceptable to either Party as provided in Section 4.1(a)(iii) of this Agreement), the Owner shall seek approval of the ISO to reduce the run hours of each of Units 4, 5 and 6 from 877 hours to 400 hours beginning in 2010 and continuing each year after that the ISO requires those Units to operate.

Notwithstanding anything to the contrary in this Section 3.4, nothing in this Agreement shall require that the Owner breach any of its contractual obligations to the ISO or other binding legal obligations to governmental authorities so long as the Owner has incurred such obligations consistent with the terms and conditions of this Agreement, including, without limitation, Section 3.3.

In the event of a dispute between the Parties regarding the Owner's compliance with its obligations under subsections 3.4(a)(i)-(vii), and before the City delivers any Notice of Default under Article 6 for noncompliance with these obligations, both Parties shall, upon request of either Party, meet and confer in good faith to attempt to resolve such dispute over a period of ten (10) business days. Further, the City shall not deliver a Notice of Default under Article 6 for Owner's alleged non-compliance with its obligations under Sections 3.4(a)(i)-(vii) before the expiration of the ten (10) business day period following delivery to the Owner of written notice of such dispute. Any other actions by the Owner in support of the City's Shutdown efforts in addition to the actions specified under this Section 3.4(a)(i)-(vii) shall be at the sole discretion of the Owner.

(b) **City's Support of Owner's Regulatory Compliance Pending Shutdown.** As long as there is not an Event of Default by the Owner under this Agreement, and for the period specified in subsection (c) below, the City agrees to support any and all regulatory approvals required for the continued operation of any of the Units before Shutdown, such support to consist of:

(i) within five (5) business days of the Owner's request the City shall submit a letter from the City Attorney ("**City Support Letter**"), to the relevant governmental agency, in the form attached to this Agreement as Exhibit E, and

(ii) upon reasonable prior notice provided by the Owner, the City shall participate in a reasonable number of meetings with the relevant governmental agencies, provided that the City's participation under this subsection 3.4(b)(ii) shall consist of verbally affirming City's support for the renewal or issuance of the relevant regulatory approval for the Plant, as stated in the City Support Letter.

In the event of a dispute between the Parties regarding the City's compliance with its obligations under subsections 3.4(b)(i)-(ii), and before the Owner delivers any Notice of Default under Article 6 for noncompliance with these obligations, both Parties shall, upon request of either Party, meet and confer in good faith to attempt to resolve such dispute over a period of ten (10) business days. Further, the Owner shall not deliver a Notice of Default under Article 6 for City's alleged non-compliance with its obligations under Sections 3.4(b)(i)-(ii) before the expiration of the ten (10) business day period following delivery to the City of written notice of such dispute. Any other actions by the City in support of the Owner's regulatory compliance pending Shutdown in addition to the actions specified under this Section 3.4(b) shall be at the sole discretion of the City.

(c) **Duration of Mutual Support.** The Owner and the City shall comply with their respective support obligations under this Section 3.4 through the Assumed ISO Release Date. If the Final Shutdown Date has not occurred by the Assumed ISO Release Date, then (i) the Owner shall extend its support obligations under Section 3.4(a)(i)-(vii) until December 31, 2011, and (ii) if it is still then reasonably foreseeable that the Plant will be Shut Down within one year of the Assumed ISO Release Date consistent with the terms and conditions of this Agreement, and the Owner is in compliance with its obligations under this Agreement, then the City's support obligation under Section 3.4(b) shall extend until December 31, 2011 unless the City, at any time on or after the Assumed ISO Release Date, decides, in its sole discretion, to rescind its support by written notice to the Owner. If the City decides to rescind its support on or after the Assumed ISO Release Date as provided above, then the City may, in its sole discretion, take such action as it deems appropriate to oppose or condition the continued operation of the Plant or any portion of the Plant, including, but not limited to, opposing the extension or renewal of any operating permits and/or the imposition by governmental regulatory authorities of air and water quality mitigation measures or other operating requirements or limitations. After December 31, 2011, each Party may, in its sole discretion, continue its support under this Section 3.4 for additional one-year extensions, not to exceed the Term of this Agreement, provided that if one Party rescinds its support under this Section 3.4 by written notice to the other Party at any time after December 31, 2011, the other Party may also rescind its support at any time by giving written notice to the Party that first rescinded its support.

3.5 Fossil Fuel Deed Restriction

Within ten (10) business days after the Final Shutdown Date, the Owner shall record a restrictive covenant for the benefit of the City in the Official Records, in the form attached to this Agreement as Exhibit I, which provides that no portion of the Site may be used to generate electricity with equipment or machinery that is powered by the combustion of fossil fuels (except for ancillary equipment or machinery or back-up generators used on the site), all as more particularly set forth in such exhibit (the "**Fossil Fuel Restriction**"). Except with respect to the Existing Secured Loan Parties as provided in Section 2.2 of this Agreement, the Fossil Fuel Restriction shall constitute covenants running with the land, binding on successors and assigns of the Owner. In the event that an Existing Secured Loan Party, or its successor or assignee, takes ownership or possession of the Site and fails to assume the Owner's obligations and rights under this Agreement under Section 2.2 of this Agreement, and the Agreement terminates after the Fossil Fuel Restriction has been recorded, then following any such termination the City shall, at the written request of the Owner or the Existing Secured Loan Party (or its successor or assignee),

execute and cause a quitclaim deed to be recorded in the Official Records evidencing the termination of the Fossil Fuel Restriction; this obligation of the City shall survive any such termination of this Agreement, as provided in Section 11.22. Notwithstanding the foregoing, and also as provided in Section 2.2 of this Agreement, the Parties understand and agree that, in the event of a refinancing of the Existing Secured Loan that provides for full repayment, the Owner shall ensure – supported by written evidence reasonably satisfactory to the City – that this Agreement, including the Fossil Fuel Restriction, has priority over the deed of trust securing the refinanced loan and, accordingly, that the Fossil Fuel Restriction shall thereafter be binding on all successors and assigns of the Owner without exception.

3.6 Failure to Achieve Shutdown of Potrero Power Plant Unit 3

With respect to Unit 3 of the Potrero Power Plant, if the Electric Reliability Removal Conditions have not been met and Unit 3 has not been Shut Down on or before June 30, 2011, then within three (3) business days after June 30, 2011, the Owner shall pay to the City, in cash or other immediately available funds, the sum of one hundred thousand dollars (\$100,000). Thereafter for each subsequent anniversary of June 30, 2011 through June 30, 2015 on which the Shutdown of Unit 3 has not been achieved, the Owner shall pay to the City, in cash or other immediately available funds, the sum of one hundred thousand dollars (\$100,000) within three (3) business days after such anniversary. Once the Shutdown of Unit 3 of the Potrero Power Plant has occurred, the Owner shall thereafter owe no further payments to the City pursuant to this Section 3.6, and the aggregate amount to be paid by the Owner to the City pursuant to this Section 3.6 shall not exceed five hundred thousand dollars (\$500,000). The City shall hold any funds received under this Section 3.6 in a separate account and use them, at such times and in such manner as the City shall determine in its sole discretion, to pay for all or part of the costs of neighborhood improvement measures for the City's southeast communities, including those measures identified in Section 2.5 of this Agreement. All expenditures of funds paid to the City under this Section 3.6 shall be subject to applicable City law, including compliance with CEQA before appropriation of funds for or approval of a particular project. Any payments made by the Owner to the City under this Section 3.6 shall be non-refundable by the City to the Owner, under all circumstances.

ARTICLE 4

STATION A BUILDINGS

4.1 Stipulated Injunction

(a) Filings.

(i) Within ten (10) days after the Effective Date, the City and Owner shall file the Stipulated Injunction with the Court to resolve the allegations in the UMB Lawsuit.

(ii) Within five (5) business days after entry of the Stipulated Injunction (without a modification that is unacceptable to either Party as provided in

Section 4.1(a)(iii)), the Owner shall dismiss its cross-claim in the UMB Lawsuit without prejudice.

(iii) If the Court does not approve the Stipulated Injunction or if the Court modifies the Stipulated Injunction on terms that are unacceptable to either Party in its reasonable discretion, then the Parties shall enter into good faith negotiations to determine whether they can agree to amend or otherwise proceed with this Agreement. For the purposes of this Agreement, if an alternative binding agreement is agreed to by the Parties under this Section 4.1(a)(iii) in place of the Stipulated Injunction, the term "Stipulated Injunction" as it is used elsewhere in the Agreement other than this Section 4.1(a) shall also mean such alternative binding agreement. If the Parties are not able to reach such agreement within ninety (90) days after the Court's disapproval or unacceptable modification of the Stipulated Injunction, or the Court's disapproval of any proposed modification agreed to by the Parties, then either Party may terminate this Agreement on ten (10) days prior notice to the other Party, and following such termination neither Party shall have any further obligations under this Agreement except as provided in Section 11.22. In the event of any such termination, the Parties intend that they be placed back in the same legal position relative to the UMB Lawsuit that they would have been in had this Agreement not become effective. More particularly, the Owner may refile its cross-claim against the City and the City agrees not to raise any defense against the cross-claim based on timeliness or laches, and the City may file a responsive pleading to the cross-claim and the Owner agrees not to raise any defense against such responsive pleading based on timeliness or laches. The rights and obligations of the Parties under the preceding two sentences of this subsection shall survive the termination of this Agreement, as provided in Section 11.22.

(b) **Demolition Under Site Plan.** Within five (5) business days after the entry of the Stipulated Injunction (without a modification that is unacceptable to either Party as provided in Section 4.1(a)(iii)), the Owner shall withdraw its June 19, 2009 environmental evaluation application to the City's Planning Department, regarding the proposed demolition of the Station A Buildings, and the Planning Department may retain the fee paid by the Owner in connection with such application to the extent the City incurred costs in reviewing the application consistent with the purpose of the fee. If the final proposed Site Plan involves demolition of some or all of the Station A Buildings, then, subject to compliance with CEQA (including the reservation of discretion described in Section 5.6), the City and the Owner shall work together and with interested parties, including, but not limited to, historic preservation interests, to examine acceptable and feasible mitigation measures for any environmental impacts associated with the demolition of those buildings or building elements.

(c) **Violation of Stipulated Injunction.** If either Party violates the Stipulated Injunction during the Term of this Agreement and before approval of the final Site Plan, then the other Party may enforce the Stipulated Injunction as provided therein.

(d) **Changes to Stipulated Injunction.** Except as expressly provided in the Stipulated Injunction, neither Party shall unilaterally request the Court to modify the Stipulated Injunction.

(e) **Third Party Actions.** In the event a third party files a complaint against the Owner and/or the City regarding the Station A Buildings, the Owner and City shall, within ten (10) business days of receiving notice of such complaint, file a joint request to the Court to take jurisdiction over such complaint and to resolve such complaint such that the Stipulated Injunction remains in effect and without alteration, consistent with this Agreement. In the event the Court refuses to join such action, or alters the intent of the Parties in resolving such complaint, the Parties will meet and confer to determine if the action can be resolved without affecting the intent of the Parties, including the Owner's ability to meet the deadlines in the Stipulated Injunction. If either Party determines, in its reasonable business judgment, that the intent of the Parties has been materially affected, then the Parties shall enter into good faith negotiations to determine whether they can agree to amend or otherwise proceed with this Agreement. If the Parties are not able to reach such agreement within ninety (90) days after they begin such negotiations, then either Party may terminate this Agreement on ten (10) days' notice to the other Party, and neither Party shall have any further obligations under this Agreement except as provided in Section 11.22.

(f) **Term.** Subject to the Court's approval of the Stipulated Injunction, the term of the Stipulated Injunction shall be eight (8) years from the date of the Court's entry of the Stipulated Injunction, provided that if before the end of such 8-year term the Owner submits to the City a Site Plan in accordance with Article 5, pays all applicable City Fees relating to the submission of the Site Plan that are then due and payable, and is in compliance with its obligations under this Agreement (including the Stipulated Injunction), then the term of the Stipulated Injunction shall be extended (subject to any requirement for the Court to approve such extension) as follows: (i) the term shall be automatically extended for an additional one-year period; (ii) after the expiration of such automatic one-year extension, the terms shall be further automatically extended for successive one-year periods, not to extend beyond the Termination Date for this Agreement, if at the beginning of each such annual extension period the Owner is diligently pursuing approval of the Site Plan application consistent with this Agreement and is in compliance with its obligations under this Agreement (including the Stipulated Injunction). Before the then-scheduled expiration of the term of the Stipulated Injunction, the Parties shall take such actions as are then reasonably necessary to seek any required approval by the Court of any extension provided for in this subsection.

(g) **Stay of Enforcement.** Subject to the Court's approval of the Stipulated Injunction, the Plaintiffs shall not enforce the UMB Ordinance (including any claim of public nuisance as defined by California Civil Code Sections 3479 and 3480) related to the existence of unreinforced masonry in the Station A Buildings except under the terms of the Stipulated Injunction.

(h) **Compliance If Stipulated Injunction Terminates; Survival.** If the Stipulated Injunction terminates by its terms and the Owner has not by such time procured a Project Permit, the Owner shall (i) at the Owner's election seek to either seismically retrofit or demolish the Station A Buildings, and apply for the issuance of a Project Permit, including the filing of plans, drawings, and specifications, within one hundred eighty (180) days, and take all actions necessary to diligently pursue City approval of the Project Permit following such application; (ii) commence work under the approved Project Permit within ninety (90) days after the Owner has obtained the Project Permit; and (iii) execute or cause to be executed the work expeditiously,

diligently, and continuously to completion and sign-off by the City's Department of Building Inspection within one (1) year of the commencement of the work. The obligation set forth in this Section 4.1(h) shall survive any termination of this Agreement.

ARTICLE 5

SITE ENTITLEMENT PROCESS

5.1 Designation of Senior Representatives

Upon written request by the Owner, the City shall designate within ten (10) days a senior staff member from the City's Office of Economic and Workforce Development (or successor department) and a senior staff member from the Planning Department (or successor department) to work with the President of Mirant Potrero, LLC, or such other representative of the Owner as the Owner shall designate in writing to the City, on the scoping and review of a proposed Site Plan, as further provided in this Article 5. The Parties shall continue to ensure that senior representatives are involved in the implementation of their respective obligations under this Article 5. If a Party wishes to replace any representative named in this Section 5.1, either temporarily (e.g., extended vacation, illness, or temporary reassignment) or permanently, such Party shall provide reasonable advance written notice, shall identify a replacement by name and title and shall provide updated contact information.

5.2 Site Plan

(a) **Possible Land Use Planning Options.** As of the reference date of this Agreement, neither the City nor the Owner envisions any particular reuse plan for the Site, provided that the Owner may not propose any Site Plan that would conflict with the Fossil Fuel Restriction. Accordingly, subject only to the Fossil Fuel Restriction, reuse of the Site following the Shutdown of the Potrero Power Plant is speculative. But, upon request by the Owner, following the Final Shutdown Date, or in reasonable anticipation of the impending Final Shutdown Date, the City, in cooperation with the Redevelopment Agency, and the Owner shall work together to explore options for the type of Site Plan to pursue, including examining the possibility of adoption by the City of a specific plan under the Planning Code covering the entire Site or of a redevelopment plan if the Site meets the statutory requirements for blight under the California Community Redevelopment Law and if it is otherwise appropriate to use redevelopment tools to facilitate the productive reuse of the Site and achieve community benefits and objectives. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to constitute any agreement on the part of the City or the Redevelopment Agency to allocate, or even to negotiate to allocate, any property tax increment to facilitate development or reuse of the Site. Further, the Owner acknowledges that even if the Site is included in a redevelopment project area, the allocation of any property tax increment from the Site or otherwise to help facilitate reuse of the Site is subject to the sole and absolute discretion of the City and the Redevelopment Agency.

(b) **No Deadline for Submission of Proposed Site Plan.** The Owner shall not have an obligation under this Agreement to prepare a proposed Site Plan or submit an application for a Site Plan proposal to the City within any particular time frame. Once the Owner formally

submits a Site Plan proposal to the City, the milestones set forth in the Entitlement Schedule described in Section 5.4 below shall apply.

5.3 Community Input Process

The City and the Owner shall work together to obtain community input on and support for the proposed Site Plan through a public review process and, following completion of that review process, will seek endorsement of the proposed Site Plan for purposes of conducting environmental review under CEQA.

5.4 Priority Processing

(a) The City shall review and process on a priority basis an application for a proposed Site Plan, including review of the environmental evaluation application under CEQA. Upon the Owner's submission of the proposed Site Plan, the City and the Owner shall use reasonable efforts to establish a mutually agreeable written schedule of milestones for the expedited entitlement process, including CEQA review, associated with the proposed Site Plan (the "**Entitlement Schedule**"), consistent with the City's obligation to give priority processing to the Site Plan. The City shall use its best efforts to meet the milestones in the Entitlement Schedule, subject to the following conditions precedent:

(i) The Owner shall have provided to the City such signed and complete formal application forms, information and other documents as the City, including its Planning Department and Department of Building Inspection, and, if applicable, the Redevelopment Agency, may reasonably require, and the Owner shall have paid applicable City Fees.

(ii) There shall be no Event of Default by the Owner of its Shutdown Obligation.

(iii) There shall be no Event of Default by the Owner of any of its obligations under Sections 3.2, 3.3, 3.4, 3.5, or 3.6 of this Agreement.

(iv) The Owner shall be in compliance with the Stipulated Injunction.

(v) There shall be no Event of Default by the Owner under any of its obligations under Article 10 of this Agreement.

(vi) The Owner recognizes and agrees that in considering the approval of any Site Plan the City may condition the effectiveness of the Site Plan on the Owner having first caused the Fossil Fuel Restriction to be recorded in the Official Records superior to any deeds of trust, mortgages, or other encumbrances on the Site the foreclosure of which could impair the Fossil Fuel Restriction (other than the Existing Deed of Trust, as provided in Section 2.2).

(vii) The City shall have no obligation to calendar as an item for approval the Site Plan unless and until the Plant has been Shut Down in accordance with Article 3 of this Agreement.

The foregoing conditions precedent are solely for the benefit of the City. If any of those conditions is not satisfied as provided above, then the City, in its sole and absolute discretion and in addition to any other available remedies under Section 7.1, may upon not less than ten (10) days written notice to the Owner describing in reasonable detail the unsatisfied condition either: (i) suspend performance of the priority processing of the Site Plan (including its obligations under Section 5.1, Section 5.2 and Section 5.4) only until such condition is satisfied, or (ii) waive the satisfaction of such terms as the City may set forth, in its sole and absolute discretion and subject to approval by the Board of Supervisors by resolution, in a written notice to the Owner.

5.5 City Costs

In the development, preparation, submission, consultation, and City review of the Site Plan, the Owner shall not be obligated to pay or reimburse any City Costs; provided, however, the Owner shall be subject to any applicable City Fees.

5.6 Reservation of Absolute Discretion by the City; CEQA Review

Regarding the Site Plan process, nothing in this Agreement shall be deemed to obligate the City Board of Supervisors, the Planning Commission, or any other board or commission of the City, the Redevelopment Agency (if applicable) or other governmental agency to grant or otherwise approve any new entitlements for redevelopment or reuse of the Site. Notwithstanding anything to the contrary in this Agreement, the City retains absolute discretion under CEQA before any action by the Board of Supervisors, the Planning Commission, or any other board or commission of the City or other governmental agency to: (i) require modifications to the Site Plan as may be necessary to mitigate any significant environmental impacts; (ii) require analysis of other feasible alternatives to avoid any significant environmental impacts (including a no project alternative); (iii) balance the benefits against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and/or (iv) approve, conditionally approve, or deny approval of the Site Plan.

ARTICLE 6

EVENTS OF DEFAULT

6.1 Defaults by Owner

Each of the following shall constitute an Event of Default by the Owner under this Agreement:

(a) The Owner fails to perform any of its obligations set forth in this Agreement, which failure continues without cure for a period of thirty (30) days following the date the City provides written notice specifying the nature of such failure; provided, however, if a longer period of time than thirty (30) days is reasonably necessary to effect such cure, then no Event of Default shall exist as long as the Owner commences such cure within such thirty (30) day period and then proceeds diligently in the prosecution of such cure to completion.

(b) The Owner fails to perform its obligation to permanently Shut Down the Potrero Power Plant by the Final Shutdown Date (except solely as expressly provided in Section 3.1(a)(iii)).

(c) Any representation made by the Owner to the City contained in this Agreement proves to be false or misleading in any material respect.

(d) The Owner files a petition for relief, or an order for relief is entered against the Owner in any case under applicable bankruptcy or insolvency law that is now or later in effect, whether for liquidation or reorganization, and this Agreement has been rejected or deemed rejected by the debtor in such case.

(e) The Owner fails to perform any of its obligations under or violates any provision of the Stipulated Injunction, as determined by final order of the Court.

6.2 Defaults by the City

The following shall constitute an Event of Default by the City under this Agreement:

(a) The City fails to perform any of its obligations set forth in this Agreement, which failure continues without cure for a period of thirty (30) days following the date the Owner provides written notice specifying the nature of such failure; provided, however, if a longer period of time than thirty (30) days is reasonably necessary to effect such cure, then no Event of Default shall exist as long as the City commences such cure within such thirty (30) day period and then proceeds diligently in the prosecution of such cure to completion.

(b) Any representation made by the City to Owner contained in this Agreement proves to be false or misleading in any material respect.

(c) The City fails to execute or file the Stipulated Injunction as provided in Section 4.1, or the City fails to perform any of its obligations under or violates any provision of the Stipulated Injunction, as determined by final order of the Court.

ARTICLE 7

REMEDIES

7.1 Remedies of the City

(a) Specific Performance.

(i) If an Event of Default by the Owner occurs, then the City shall have the right to bring an action for specific performance or other equitable relief, or any other remedy authorized by applicable law, subject to the limitation set forth in Section 7.3.

(ii) Except with respect to the Existing Secured Loan Parties as provided in Section 2.2, in the event that a Transferee fails to execute an Assumption of Obligations when required by Section 10.1(b) and does not comply with the Shutdown Obligation,

the City shall have the right of specific performance against the Transferee to require it to comply with the Shutdown Obligation.

(b) **Suspension of Performance.** Notwithstanding anything to the contrary in this Agreement, if at any time an Event of Default by the Owner occurs before the Final Shutdown Date, then the City shall, in addition to its other remedies under this Section 7.1, have the right to suspend performance of its obligations under Article 5 until such Event of Default is cured by the Owner.

(c) **Consent to Specific Performance and Waiver of Rights by the Owner.** IN ANY ACTION BY THE CITY FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF UNDER THIS AGREEMENT, THE OWNER WAIVES ANY RIGHT TO ASSERT AGAINST THE CITY ANY DEFENSE OR COUNTERCLAIM THAT THE OWNER MAY NOW OR AT ANY LATER TIME MAY HAVE UNDER APPLICABLE LAW THAT SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF IS NOT AN APPROPRIATE REMEDY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DEFENSES AND COUNTERCLAIMS IT MAY HAVE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 526, OR ANY SIMILAR LAW, OR BASED ON ANY ASSERTION THAT THERE IS ANY NEED FOR CONTINUOUS SUPERVISION BY THE COURT OR LACK OF MUTUALITY. THE OWNER ACKNOWLEDGES AND AGREES THAT ITS BREACH OF ANY OF THE COVENANTS IN THIS AGREEMENT WILL CAUSE THE CITY GREAT AND IRREPARABLE INJURY AND THAT NO ADEQUATE LEGAL REMEDY IS OR WILL BE AVAILABLE TO COMPENSATE THE CITY FOR SUCH INJURY. THUS, THE OWNER AGREES THAT IN THE EVENT OF ANY SUCH BREACH BY THE OWNER, THE CITY SHALL BE ENTITLED TO INJUNCTIVE AND OTHER EQUITABLE RELIEF (INCLUDING, BUT NOT LIMITED TO, PROHIBITORY INJUNCTIVE RELIEF) TO PREVENT A BREACH BY THE OWNER OF THE COVENANTS CONTAINED IN THIS AGREEMENT. THE OWNER CONSENTS TO THE ENTRY OF A TEMPORARY RESTRAINING ORDER, TOGETHER WITH PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, FROM ANY COURT OF COMPETENT JURISDICTION TO ENJOIN ANY VIOLATION. THE OWNER WAIVES ANY REQUIREMENT THAT THE CITY POST A BOND OR ANY OTHER SECURITY IN CONNECTION WITH SUCH INJUNCTIVE RELIEF. THE OWNER AGREES THAT SUCH INJUNCTIVE RELIEF BY THE CITY SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL OR EQUITABLE REMEDIES THAT MAY BE AVAILABLE TO THE CITY UNDER THIS AGREEMENT.

Initials of the Owner: J.H.C.

7.2 Remedies of the Owner

(a) **Specific Performance.** If an Event of Default by the City occurs, then the Owner shall have the right to bring an action for specific performance or other equitable relief, or any other remedy authorized by applicable law, subject to the limitation set forth in Section 7.3.

(b) **Suspension of Performance.** Notwithstanding anything to the contrary in this Agreement, if at any time an Event of Default by the City occurs before the Final Shutdown

Date, then the Owner shall, in addition to its other remedies under this Section 7.2, have the right to suspend performance of its obligation to Shut Down a Unit or Units for which the Electric Reliability Removal Conditions have been satisfied until such Event of Default is cured by the City.

(c) **Consent to Specific Performance and Waiver of Rights by the City.** IN ANY ACTION BY THE OWNER FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF UNDER THIS AGREEMENT, THE CITY WAIVES ANY RIGHT TO ASSERT AGAINST THE OWNER ANY DEFENSE OR COUNTERCLAIM THAT THE CITY MAY NOW OR AT ANY LATER TIME MAY HAVE UNDER APPLICABLE LAW THAT SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF IS NOT AN APPROPRIATE REMEDY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DEFENSES AND COUNTERCLAIMS IT MAY HAVE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 526, OR ANY SIMILAR LAW, OR BASED ON ANY ASSERTION THAT THERE IS ANY NEED FOR CONTINUOUS SUPERVISION BY THE COURT OR LACK OF MUTUALITY. THE CITY ACKNOWLEDGES AND AGREES THAT ITS BREACH OF ANY OF THE COVENANTS IN THIS AGREEMENT WILL CAUSE THE OWNER GREAT AND IRREPARABLE INJURY AND THAT NO ADEQUATE LEGAL REMEDY IS OR WILL BE AVAILABLE TO COMPENSATE THE OWNER FOR SUCH INJURY. THUS, THE CITY AGREES THAT IN THE EVENT OF ANY SUCH BREACH BY THE CITY, THE OWNER SHALL BE ENTITLED TO INJUNCTIVE AND OTHER EQUITABLE RELIEF (INCLUDING, BUT NOT LIMITED TO, PROHIBITORY INJUNCTIVE RELIEF) TO PREVENT A BREACH BY THE CITY OF THE COVENANTS CONTAINED IN THIS AGREEMENT. THE CITY CONSENTS TO THE ENTRY OF A TEMPORARY RESTRAINING ORDER, TOGETHER WITH PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, FROM ANY COURT OF COMPETENT JURISDICTION TO ENJOIN ANY VIOLATION. THE CITY WAIVES ANY REQUIREMENT THAT THE OWNER POST A BOND OR ANY OTHER SECURITY IN CONNECTION WITH SUCH INJUNCTIVE RELIEF. THE CITY AGREES THAT SUCH INJUNCTIVE RELIEF BY THE OWNER SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL OR EQUITABLE REMEDIES THAT MAY BE AVAILABLE TO THE OWNER UNDER THIS AGREEMENT.

Initials of the City: _____

7.3 Limitations of Liability

(a) **No Monetary Damages, Including Consequential or Incidental Damages.** Except As provided in Section 7.3(b), below, as a material part of the consideration for the entry by the Owner and the City into this Agreement, the City and the Owner agree that neither the City nor the Owner shall be liable for, and the City and the Owner waive any claim for, monetary damages, including, but not limited to, any incidental or consequential damages, arising out of any Event of Default on the part of the Owner or the City.

(b) **Exception to No Monetary Damages Provision.** Section 7.3(a) does not affect the City's rights under the bankruptcy laws and does not apply in the event the Owner files a

petition for relief under any chapter of the U.S. Bankruptcy Code or is adjudicated an involuntary debtor and the court allows Owner to reject this Agreement. In the event this Agreement is rejected by Owner under the bankruptcy laws, the City may seek to recover monetary damages arising out of any Event of Default on the part of the Owner.

(c) **No Individual Liability.** The Owner agrees that no member, commissioner, official, advisor, agent or employee of the City will be personally liable to the Owner, or any successor in interest, due to an Event of Default by the City. The City agrees that no directors, officers, shareholders, members, employees, advisers or agents of the Owner or of its Affiliates will be personally liable to the City, due to an Event of Default by the Owner.

ARTICLE 8

INDEMNITY

8.1 Indemnification of the City

Subject to the terms, conditions and limitations set forth below and to the extent permitted by law, the Owner agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses (including, without limitation, any judgments, settlements, consent decrees, stipulated judgments or other partial or complete terminations of any actions or proceedings that require any of the Indemnified Parties to take any action) imposed upon, incurred by or asserted against any of the Indemnified Parties in connection with the occurrence or existence of any of the following arising as a result of this Agreement: (i) any accident, injury to or death of any Person or loss or damage to property occurring on the Site; (ii) any accident, injury to or death of any person or loss or damage to property occurring near or around the Site and that shall be directly or indirectly caused by the negligent act or omission or willful misconduct of the Owner or its agents, tenants or invitees; (iii) any development, construction, operation, use, occupation, management, marketing, leasing, condition, financing or refinancing, sale or Transfer of the Site; (iv) non-compliance with applicable Laws, including, but not limited to, Laws relating to hazardous materials, disabled access (including, without limitation, the American with Disabilities Act) and unreinforced masonry buildings; (v) any third-party contracts entered into by or on behalf of the Owner with respect to the Site; (vi) any civil rights actions or other legal actions or suits initiated by any occupant or invitee of the Site; and (vii) any claim that Owner and the City are joint venturers. Notwithstanding the foregoing, the Owner shall not be required to Indemnify the Indemnified Parties against Losses if such Losses are caused by the negligence or willful misconduct of the City or the Agency or their respective directors, officers, employees, agents, successors and assigns, including the negligence or willful misconduct of the Indemnified Parties (or failing to act) or in the City's regulatory capacity in the exercise of its police powers.

8.2 Terms and Conditions

The foregoing indemnity is subject to the following terms and conditions.

(a) **Immediate Obligation to Defend.** The Owner specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that is actually or potentially within the scope of the indemnity provisions of Section 8.1, even if

such claim is or may be groundless, fraudulent or false. Such obligation arises at the time such claim is tendered to the Owner by an Indemnified Party and continues at all times after such tender.

(b) **Notice.** The Indemnified Parties agree to give notice to the Owner with respect to any suit or claim initiated against the Indemnified Parties. Such notice shall be given at the address for notices of the Owner set forth in this Agreement, and in no event later than the earlier of (i) ten (10) days after valid service of process as to any suit or (ii) fifteen (15) days after receiving written notification of the filing of such suit or the assertion of such claim, which the City has reason to believe is likely to give rise to a claim for indemnity under this Article. If notice is not given to the Owner in a timely manner as provided in this Article, then, except as provided below, the Owner's liability shall terminate as to the matter for which such notice is not given, provided that failure to notify the Owner shall not affect the rights of the Indemnified Parties or the obligations of the Owner under this Article unless the Owner is materially prejudiced by such failure, and then only to the extent of such prejudice.

(c) **Defense.** The Owner shall, at its option but subject to the reasonable consent and approval of the Indemnified Parties, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Owner's own choice; provided, however, in all cases the Indemnified Parties shall be entitled to participate in such defense, compromise, or settlement at their respective expense. If the Owner shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Parties alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Parties shall have the right promptly to hire counsel at the Owner's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Indemnified Parties upon receipt by the Owner of a properly detailed invoice; provided that the Owner must consent in writing to any proposed compromise or settlement, which consent shall not be unreasonably withheld.

(d) **Insurance.** The indemnity contained in Section 8.1 shall not be limited by any insurance carried by the Owner.

(e) **Survival.** The indemnity contained in this Section shall survive any termination of this Agreement as to matters or Losses that arise during the term of this Agreement.

(f) **No Limitation on Other Obligations.** The agreement to Indemnify set forth above is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that the Owner may have to the City under any other permits, approvals or agreements with the City, at common law or otherwise.

(g) **Limitation.** The Owner has no duty under Section 8.1 regarding any claim against any Indemnified Parties directly related to the existence, interpretation and/or enforcement of this Agreement.

ARTICLE 9

SETTLEMENT AND RELEASE OF CLAIMS

9.1 City's Release of Claims

In consideration of the promises, conditions and covenants contained in this Agreement, and except for any claims relating to a breach of any obligation by the Owner under this Agreement or the Stipulated Injunction or any claim that the City may otherwise make regarding such matter consistent with the Stipulated Injunction, the City, on behalf of itself, its officials (including but not limited to its elective boards, appointive boards, and commissioners), agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors, constituents, and assigns, shall and does release, relinquish, abandon and waive all claims, causes of action, demands, liabilities, damages, costs, and/or obligations of any nature whatsoever (including attorneys' fees and costs of suit), whether known or unknown, that it has, had, and/or might have against the Owner, its shareholders, officers, directors, agents, employees, attorneys, consultants, representatives, parent corporation, subsidiaries, affiliates, predecessors, successors, and assigns, which arise from, relate to, or are based upon the Disputes, including, without limiting the generality of the foregoing, all such claims, demands, causes of action, obligations or liabilities that in any way relate to or arise out of any action, omission, representation, or proceeding with respect to the matters that were raised or which could have been raised as part of the Disputes. This release does not extend to claims of the City acting in its regulatory capacity in the exercise of its police powers, subject to Article 4 of this Agreement and the Stipulated Injunction.

9.2 The Owner's Release of Claims

In consideration of the promises, conditions and covenants contained in this Agreement, and except for any claims relating to a breach of any obligation by the City under this Agreement or the Stipulated Injunction or any claim that the Owner may otherwise make regarding such matter consistent with the Stipulated Injunction, the Owner, on behalf of itself, its officers, agents, employees, attorneys, consultants, representatives, affiliates, predecessors, successors, constituents, and assigns, shall and does release, relinquish, abandon and waive all claims, causes of action, demands, liabilities, damages, costs, and/or obligations of any nature whatsoever (including attorneys' fees and costs of suit), whether nor known or unknown, that it has, had, and/or might have against the City, its shareholders, officers, directors, agents, employees, attorneys, consultants, representatives, parent corporation, subsidiaries, affiliates, predecessors, successors, and assigns, that arise from, relate to, or are based upon the Disputes, including, without limiting the generality of the foregoing, all such claims, demands, causes of action, obligations or liabilities that in any way relate to or arise out of any action, omission, representation, or proceeding with respect to the matters that were raised or that could have been raised as part of the Disputes.

9.3 Waiver of Civil Code Section 1542

Each of the Parties expressly acknowledge that each may have claims against the other, of which claim(s) it is currently unaware, and nevertheless each agrees that this Agreement is intended to and does extend to any and all claims it may have against the other, whether known or unknown, that arise from the matters alleged in this Agreement. As a further inducement and consideration, the Parties expressly and specifically waive any rights or benefits available to them under California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The City and the Owner each acknowledge it may have sustained damages, losses, costs or expenses that are currently unknown or unsuspected, and that such damages, losses, costs or expenses as may have been sustained may give rise to additional damages, losses, costs or expenses in the future. But each Party acknowledges that this Agreement has been negotiated and agreed upon in light of this situation and expressly waives any and all rights that it may have under California Civil Code section 1542 or under any state or federal statute or common law principle of similar effect.

9.4 Negotiated Settlement

The discussions that have produced this Agreement have been conducted with the explicit understanding that they are privileged under California Evidence Code section 1152 and Federal Rule of Evidence 408, and that such discussions shall be without prejudice to the position of any party and may not be used in any manner in any proceeding or otherwise, except as may be necessary to enforce this Agreement or as otherwise required by law.

9.5 No Admission of Liability

The Parties, and each of them, agree that this Agreement is intended to be a compromise of disputed claims and that this Agreement is entered into for settlement purposes only. Neither the fact of, nor any statement or provision contained in this Agreement, nor any action taken under this Agreement, shall constitute, be construed as, or be admissible in evidence as, any admission or concession with respect to any claim or allegation of any wrongdoing, fault, violation of law, or liability of any kind on the part of any of the Parties. But nothing stated in this paragraph shall preclude any of the Parties from seeking to introduce the terms of this Agreement in any proceeding to enforce the Agreement.

9.6 Voluntary Release

The Parties have carefully read this Agreement, and sign it freely and voluntarily upon the advice of their attorneys. The Parties affirm that the only consideration for their execution of this Agreement are the terms stated in the body of this Agreement; that no other promise or agreement of any kind has been made to or with them by any person or entity whatsoever to

cause them to execute this Agreement; that they are competent to execute this Agreement; that their agreement to execute this Agreement has not been obtained by any duress or undue influence; and that they fully understand and voluntarily execute this Agreement knowing it constitutes a complete release of claims.

ARTICLE 10

ASSIGNMENT AND TRANSFER

10.1 Transfers

(a) **The Owner.** The Parties acknowledge that the Owner is not a real estate development company and may wish to assign or otherwise transfer its rights under this Agreement regarding the development and/or reuse of the Site, including the processing of a Site Plan under Article 5, to a third party, or the Owner may enter into a joint venture or other arrangement with a third party to create or implement a Site Plan. The Owner may assign or transfer such rights in accordance with the provisions of this Article 10.

(b) **Assumption of Obligations Agreement.** Except as provided in Section 2.2 regarding the Existing Secured Loan and the Existing Secured Loan Parties, the Owner, any Transferee, and the City shall enter into the Assumption of Obligations, which shall describe (i) the property or interests being Transferred, (ii) the obligations of the Owner that the Transferee assumes, and (iii) the Transferee's acknowledgement that the Transferee has reviewed and agrees to be bound by this Agreement and all conditions and restrictions applicable to the Site. Notwithstanding the foregoing or anything to the contrary in this Agreement (except as contemplated by Section 2.2), the fact that a Transferee of this Agreement, or any successor-in-interest to the Owner under this Agreement, whatsoever the reason or lack of a reason, shall not have assumed such obligations or so agreed, shall not relieve or except such Transferee from such obligations, conditions or restrictions or deprive or limit the City with respect to any of its rights or remedies with respect to this Agreement (unless and only to the extent otherwise specifically provided in this Agreement or agreed to by the City in writing in its sole discretion). Failure by a Transferee to execute, acknowledge and deliver the Assumption of Obligations shall not affect such Transfer. In the event of failure to deliver to the City the Assumption of Obligations (except as provided in Section 2.2), the City may deliver to the Owner a written demand that a fully executed and acknowledged Assumption of Obligations be delivered to the City, and if the Owner and the Transferee fail to deliver such an Assumption of Obligations to the City executed by the Owner and the Transferee within thirty (30) days after receipt of such written demand, the Owner and the Transferee shall be deemed to have executed and delivered an Assumption of Obligations in the form attached as Exhibit F and the City shall then have the right to enforce any and all of its rights under such Assumption of Obligations as though it had been executed, acknowledged and delivered. Upon the execution and delivery to the City of the Assumption of Obligations executed by the Owner and the Transferee, the Owner shall be relieved of and released from any obligations under this Agreement assumed by the Transferee under such executed and delivered Assumption of Obligations.

(c) **Notice of Transfers.** The Owner shall provide to the City no less than seven (7) business days' prior notice of a Transfer, excluding any Transfer contemplated by Section 2.2.

Such notice shall be in writing and shall include the identity, address and telephone number of the proposed Transferee, including the designated representative(s) under Section 5.1. Failure of the Owner to provide prior written notice of the proposed Transfer to the City as provided in this Section shall not affect such Transfer. If (i) the Owner fails to provide a prior written notice of a Transfer required under this Section 10.1(c), (ii) Section 10.1(b) of this Agreement requires the Owner and the Transferee to enter into the Assumption of Obligations with respect to such Transfer, and (iii) the Assumption of Obligations has not been executed and delivered by the Transferee, then the City shall have the right, at its sole discretion, to terminate this Agreement in its entirety upon twenty (20) days written notice to the Owner unless within such twenty (20) day period the Transferee executes the Assumption of Obligations. If the City provides such notice of termination, and the Transferee does not execute the Assumption of Obligations within the foregoing twenty (20) day period, then this Agreement shall terminate and shall then have no further force or effect (except for any obligations that expressly survive the termination as provided in Section 11.22). The Owner shall provide notice of an Excluded Transfer or Transfer contemplated by Section 2.2 within ten (10) days of such transfer.

(d) **Regulatory and City Approvals.** Before the Final Shutdown Date, the Owner shall make best efforts to provide to the City a copy within five (5) business days of any filing made by it or an Affiliate with the FERC that seeks approval of a direct or indirect transfer of a Controlling ownership interest in the Owner other than an Excluded Transfer. Regarding any such transfer, the City expressly reserves its rights to comment, intervene, oppose or otherwise participate in any regulatory approval process applicable to such transfer, including, but not limited to, the approval process under Section 203 of the Federal Power Act. Except for a Transfer contemplated by Section 2.2, before the Final Shutdown Date, any Transfer of the member interests in the Owner or any Transfer of the Owner's interest in the Site, in whole or in part, that is not part of an Excluded Transfer, shall be subject to the reasonable approval of the City, which shall not be unreasonably withheld or delayed so long as the Transferee demonstrates its intent to execute the Assumption of Obligations at the closing of the Transfer as set forth in Section 10.1(b). A failure (i) by the Owner or a Transferee to obtain City approval under this Section 10.1(d) before or concurrent with such Transfer, or (ii) by the Transferee to execute and deliver the Assumption of Obligations following the City's approval of such Transfer based on the Transferee's indication of its intent to execute the Assumption of Obligations, shall not invalidate the Transfer, but the City shall have the right, at its sole discretion, to terminate this Agreement in its entirety upon twenty (20) days written notice to the Owner unless within such twenty (20) day period the Transferee executes the Assumption of Obligations. If the City provides such notice of termination, and the Transferee does not execute the Assumption of Obligations within the foregoing twenty (20) day period, then this Agreement shall terminate and shall then have no further force or effect (except for any obligations that expressly survive the termination as provided in Section 11.22).

(e) **Existing Secured Loan.** Notwithstanding anything to the contrary in this Agreement, this Article 10 shall not apply to any Transfer of the Site or the member interests of the Owner to or by any Existing Secured Loan Party or any successor or assign of such party.

ARTICLE 11

GENERAL

11.1 Notices

Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between the Parties required or permitted under this Agreement shall be in writing and shall be deemed given and effective upon the date of receipt (i) if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt of delivery, or (iii) if mailed by United States registered or certified mail, first class postage prepaid, to the Party at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by facsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Agreement; however, neither Party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a telefacsimile copy of the notice.

- (a) In the case of a notice or communication by the Owner to the City:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Theresa Mueller
Reference: Potrero Power Plant
Telefacsimile: (415) 554-4763
Telephone: (415) 554-4640

- (b) And in the case of a notice or communication sent by the City to the Owner:

Mirant Potrero, LLC
P.O. Box 192
696 West 10th St.
Pittsburg, CA 94565
Attn: President
Reference: Potrero Power Plant
Telephone: (925) 427-3560

With a copy to:

Mirant Corporation
1155 Perimeter Center West
Atlanta, GA 30338
Attn: General Counsel

Holland & Knight LLP
50 California St. Suite 2800
San Francisco, CA 94111
Attn: Elizabeth Lake

Every notice given to a Party to this Agreement, under the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (i) the Section of this Agreement under which the notice is given and the action or response required, if any;
- (ii) if applicable, the period of time within which the recipient of the notice must respond;
- (iii) if approval is being requested, shall be clearly marked "Request for Approval under the Settlement Agreement";
- (iv) if a notice of a disapproval or an objection that is subject to a reasonableness standard, shall specify with particularity the reasons for the disapproval or objection; and
- (v) if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval that is the subject matter of the notice.

If a request for approval states a period of time for approval that is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days before the effective date of the change.

11.2 Relationship of Parties: No Joint Venture or Partnership

The subject of this Agreement is an agreement for the Shutdown of the Potrero Power Plant and for a private development, with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement is intended to or shall be construed or deemed to render the City a partner in the Owner's business, or joint venturer or member in any development or joint enterprise with the Owner, including, but not limited to, the development or reuse of the Site. The Owner shall Indemnify the City against any Losses relating to any claim of any such joint venture as provided in Section 8.1. Nothing in this Agreement is intended to or shall be construed to create any principal-agent relationship between the Owner and the City.

11.3 Conflict of Interest

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

11.4 Time of Performance

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date, unless otherwise provided in this Agreement.

(b) **Weekends and Holidays.** A performance date that falls on a Saturday, Sunday or City holiday (or official City furlough day) is deemed extended to the next City working day.

(c) **Days for Performance.** All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.

11.5 Interpretation of Agreement

(a) **Words of Inclusion.** The use of the terms "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters set forth, whether or not language of non-limitation is used with reference to such items or matters. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(b) **No Presumption Against Drafter.** This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

(c) **Costs and Expenses.** The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(d) **Agreement References.** A reference to any provision, term or matter "in this Agreement," "herein" or "hereof," or words of similar import shall be deemed to refer to any and all provisions of this Agreement reasonably related in the context of such reference, unless such reference refers solely to a specific numbered or lettered Article, Section or paragraph of this Agreement or any specific subdivision of this Agreement.

(e) **Approvals and Consents.** Unless this Agreement otherwise expressly provides, all approvals, consents or determinations to be made by or on behalf of the City under this Agreement shall be made by the City Attorney, or his or her designee. Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction is required of a Party under this Agreement, it shall not be unreasonably withheld or delayed. Except with respect to matters that a Party is expressly entitled to determine in its sole and absolute discretion, the reasons for disapproval shall be stated in reasonable detail in writing. Approval by the Owner or the City to or of any act or request by the other shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

(f) **Recitals.** The Recitals in this Agreement are included for convenience of reference only. In the event of any conflict or inconsistency between the Recitals and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control. The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement.

(g) **Captions.** The captions preceding the articles and Sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(h) **Exhibits.** Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

11.6 Successors and Assigns

This Agreement is binding upon and will inure to the benefit of the successors and assigns of the City and the Owner, except as expressly provided in this Agreement.

11.7 No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns, except as expressly provided in this Agreement.

11.8 Counterparts

This Agreement may be executed in counterparts and by facsimile or e-mailed signatures, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

11.9 Entire Agreement

This Agreement, including the attached Exhibits, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous conditions mentioned in or incidental to this Agreement (including, but not limited to, any term sheets relating to any of the subject matters of this Agreement). No parol evidence of any prior draft of this Agreement or any other agreement shall be permitted to contradict or vary the terms of this Agreement.

11.10 Governing Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. As part of the consideration for the City's entering into this Agreement, the Owner agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of the City, be litigated in courts located within the State of California, in the City and County of San Francisco, and the Owner expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Owner wherever the Owner may then be located, or by certified or registered mail directed to the Owner at the address set forth in this Agreement for the delivery of notices.

11.11 Extensions by the City

Upon the request of the Owner, the City Attorney or his or her designee may, by written instrument and in the City Attorney's sole and absolute discretion, extend the time for the Owner's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as he or she determines appropriate, including but not limited to, the time within which the Owner shall agree to such terms or conditions, provided, however, any such extension for more than thirty (30) days or the permissive curing of any particular material default will be subject to approval of the Board of Supervisors by resolution and in no event will operate to release any of the Owner's obligations nor constitute a waiver of the City's rights regarding any other term, covenant or condition of this Agreement or any other default in, or breach by the Owner of, this Agreement or otherwise affect compliance with the provisions of Section 11.4(d) with respect to the extended date or the other dates for performance under this Agreement.

11.12 Further Assurances

The Parties agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to effectuate the terms of this Agreement. The City Attorney is authorized to execute on behalf of the City any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons

that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of the City under this Agreement, if the City Attorney determines that the document is necessary or proper, consistent with the purposes of this Agreement and in the City's best interests. The City Attorney's signature of any such document shall conclusively evidence such a determination by him or her.

11.13 Severability

If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

11.14 Amendments; Corrections of Technical Errors

Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties. Any material amendment of this Agreement shall be subject to approval of the Board of Supervisors by resolution. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement in the legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel in any map or drawing that is an Exhibit, or in the typing of this Agreement or any of its Exhibits, the Parties by mutual agreement may correct such error by written memorandum executed by them without the necessity of amendment of this Agreement. The City Attorney may execute any such written memorandum on behalf of the City.

11.15 Representations, Warranties and Covenants

(a) **Owner Representation, Warranties and Covenants.** The Owner represents, warrants, and covenants to the City that as of the Effective Date, each of the following statements is accurate and complete:

(i) **Valid Existence; Good Standing.** The Owner is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of California. The Owner has all requisite power and authority to own its property and conduct its business as presently conducted.

(ii) **Authority.** The Owner has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its duties and obligations under this Agreement. Without limiting the foregoing, the Owner has obtained any and all required approvals from its Board of Managers and from the Mirant Corporation Board of Directors. The Owner has provided (or upon written request will provide) to the City a written resolution of the Owner (and any constituent entities) authorizing the execution of and performance by the Owner of its obligations under this Agreement.

(iii) **No Limitation on Ability to Perform.** Neither the Owner's limited liability company agreement, nor any other agreement (including, without limitation, the Existing Secured Loan) or Law prohibits or materially limits or otherwise affects the right or power of the Owner to enter into and perform all of the terms and covenants of this Agreement. Neither the Owner nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that prohibits or materially limits or otherwise affects the same. Except as expressly stated in this Agreement, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Owner of this Agreement or any of the terms and covenants contained in this Agreement (or if required, any such consent, authorization or approval has been obtained, any such action has occurred, and any such notice has been given). Other than the UMB Lawsuit, there are no pending or threatened suits or proceedings or undischarged judgments affecting the Owner before any court, governmental agency, or arbitrator that, if determined adversely to Owner, might materially adversely affect the enforceability of this Agreement or the ability of the Owner to perform its obligations under this Agreement.

(iv) **Valid Execution.** The execution and delivery of this Agreement (and the agreements contemplated in this Agreement) by the Owner have been duly and validly authorized by all necessary action on the part of the Owner. Upon its execution and delivery by all Parties and Board of Supervisors approval under Section 2.3(b), this Agreement will be a legal, valid, binding and enforceable obligation of the Owner.

(v) **Business Licenses.** To the Owner's knowledge, the Owner has obtained all licenses required to conduct business in San Francisco and it is not in default of any fees or taxes due to the City.

(vi) **Financial Matters.** (1) The Owner is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, including, but not limited to, the Existing Secured Loan, (2) the Owner has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code (other than the chapter 11 bankruptcy proceeding that was filed in 2003 in the United States Bankruptcy Court for the Northern District of Texas, Case No. 03-46590 (DML), in which a plan of reorganization became effective for the Owner on January 3, 2006) and has no present intention to petition for relief under any chapter of the U.S. Bankruptcy Code, (3) to the Owner's knowledge, no involuntary petition naming the Owner as debtor has been filed under any chapter of the U.S. Bankruptcy Code, (4) the Owner is not in default under its confirmed bankruptcy plan of reorganization in Case No. 03-46590 (DML), and (5) the Owner has the financial wherewithal to perform all of its financial and other obligations under this Agreement.

(vii) **Existing Secured Loan.** Mirant North America and the Owner are in compliance with their material obligations under the Existing Secured Loan and, to the Owner's knowledge, no event has occurred that with the passage of time or the giving of notice, or both, would constitute an event of default under the note, Existing Deed of Trust or any other agreements of the Owner or Mirant North America relating to the Existing Secured Loan. The Existing Secured Loan will mature, under its current terms, on January 3, 2013.

For purposes of the foregoing representations and warranties, whenever a statement is qualified by reference to Owner's knowledge or lack of knowledge, such reference is intended to refer to, and be limited to, matters within the actual knowledge of, or which should be discovered upon a reasonably diligent inquiry by, those officers of the Owner who are most knowledgeable with the Owner's business dealings with the Site.

(b) **City Representations, Warranties, and Covenants.** The City represents, warrants, and covenants to the Owner that as of the Effective Date, each of the following statements is accurate and complete:

(i) **Authority.** The City has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its duties and obligations under this Agreement.

(ii) **Valid Execution.** The execution and delivery of this Agreement (and the agreements contemplated in this Agreement) by the City have been duly and validly authorized by all necessary action on the part of the City. Upon its execution and delivery by all Parties and Board of Supervisors approval under Section 2.3(b), this Agreement will be a legal, valid, binding and enforceable obligation of the City. The City has provided (or upon written request will provide) to the Owner a written resolution of the City authorizing the execution of and performance by the City of its obligations under this Agreement.

(iii) **Defaults.** The execution, delivery and performance of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the City is a party or (B) any applicable law, statute, ordinance or regulation.

For purposes of the foregoing representations and warranties, whenever a statement is qualified by reference to the City's knowledge or lack of knowledge, such reference is intended to refer to, and be limited to, matters within the actual knowledge of, or which should be discovered upon a reasonably diligent inquiry by employees of the City Attorney who are most knowledgeable with this Agreement.

11.16 Cooperation and Non-Interference

In connection with this Agreement, the Parties shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the Parties shall each refrain from doing anything that would render its performance under this Agreement impossible

and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement. In all situations arising out of this Agreement, the Parties shall each attempt to avoid and minimize the damages resulting from the conduct of the other and shall take all reasonably necessary measures to achieve the provisions of this Agreement.

11.17 Tropical Hardwoods and Virgin Redwoods

The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

11.18 MacBride Principles

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

11.19 Conflicts of Interest

The Owner acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that would constitute a violation of such provisions, and agrees that if the Owner becomes aware of any such fact during negotiations for the Agreement then the Owner shall immediately notify the City.

11.20 Notification of Limitations on Contributions

The Owner acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Owner acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of fifty thousand dollars (\$50,000) or more. The Owner further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Owner's board of directors; the Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent in the

Owner; any subcontract listed in the bid or contract; and any committee that is sponsored or controlled by the Owner. Additionally, the Owner acknowledges that it must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

11.21 Non-Discrimination

The Owner agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, height, weight, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with the Owner, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Owner.

The Owner does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension or retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing registration.

11.22 Survival

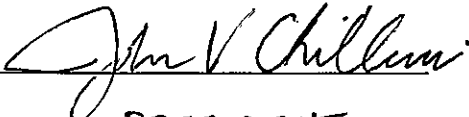
Notwithstanding anything to the contrary in this Agreement, the following provisions shall survive the expiration of the Term or any other termination of this Agreement: (i) any obligation that arises and was not satisfied before termination shall survive any termination of this Agreement except to the extent otherwise provided in this Agreement; (ii) the releases and indemnities set forth in Articles 8 and 9 of this Agreement shall continue as set forth in those articles, and (iii) and any provision expressly stated in this Agreement to survive in whole or in part following a termination of this Agreement.

11.23 Exhibits

The attached Exhibits A-I are made a part of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on this the
date first written above.

MIRANT POTRERO, LLC,
a Delaware limited liability company


ITS PRESIDENT

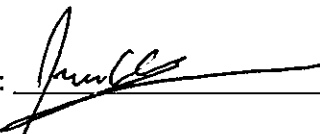
CITY AND COUNTY OF SAN FRANCISCO,
a charter city and county

By: _____

Under Board of Supervisors Ordinance No. _____,
adopted _____, 2009

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 
Deputy City Attorney